Università degli Studi di Urbino Carlo Bo

Department of Economy, Society, Politics (DESP)

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CULTURAL DIVERSITY AND THE LAW.
PERCEPTION AND MANAGEMENT IN ITALIAN COURTROOM SETTINGS

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Coordinator: Prof. Antonello Zanfei

Supervisor: Prof. Isabella Quadrelli

Co-Supervisor: Prof. Ilenia Ruggiu

Ph.D. student: Claudia Cavallari

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An important premise must be made in terms of translating legal terms from Italian into English.
As acknowledged by various authors, the principal challenge in legal translation stems from the differences, and sometimes the absence, of legal concepts between the source language and the target language, or between the legal framework expressed in the original text and the legal framework within which the translated text is intended (Longinotti, 2009). Therefore, the primary difficulty in legal translation arises from the inability to translate not just terms, but rather concepts, particularly those concepts that are unique to specific legal systems and not present in others.
The concepts, categories, classifications, and terms of the English or American legal system do not find a correspondence neither in the Italian system nor in those of civil law more generally.
Since there is no coincidence of either many categories or concepts with our legal system, important problems arise with the terminology used (De Franchis, 1984).
The untranslatability of some terms, resulting from the absence of conceptual equivalences, made me question how to render certain concepts in English. Therefore, I have chosen to use the most commonly employed translations found in the literature.

Introduction

Plurality represents an inherent trait of modern societies, a characteristic that European societies unmistakably share. This phenomenon is by no means novel; Europe has historically exhibited linguistic, religious, and cultural diversity. However, diversity has undergone a significant intensification and expansion in recent decades, propelled by post-World War II migration and refugee movements.

Against this backdrop, law stands out as a primary arena where the complexities brought about by this inherent plurality are keenly experienced. Individuals hailing from diverse religious and cultural backgrounds increasingly seek refuge in courts, seeking protection for elements of their faith or cultural practices. This trend puts significant pressure on prevailing legal paradigms and conventional background assumptions. As novel issues emerge within the legal sphere, scholars grapple with the pervasive factual heterogeneity already present, reflecting a reality where religious and cultural diversity exists not only across but also within groups. A central theme dominating legal academic discourse is whether and how the law should acknowledge this diverse reality, and to what extent. For some, the question is not merely whether the law ought to acknowledge this reality, but rather whether it is capable of doing so.

Inquiries regarding cultural distinctions and the extent to which they should be acknowledged within legal frameworks have sparked considerable discourse among legal professionals and other stakeholders. These discussions touch upon issues deeply relevant to contemporary global debates concerning integration, multiculturalism, and the management of diversity. Drawing upon these ongoing dialogues, this thesis aims to enhance both theoretical understanding and practical insights into the intersection of legal application and cultural diversity. It achieves this by scrutinizing real-life practices and interpretations within Italian jurisprudence, while also exploring how the legal environment influences legal procedures and, reciprocally, is influenced by them.

In family law adjudication, judges wield a varying degree of discretion to evaluate, interpret, and apply terms and concepts often couched in ambiguous or indeterminate language, such as "best interests of the child" or "hardship." Moreover, entrenched legal constructs are under scrutiny and subject to reevaluation. For instance, should "marriage" be strictly defined as a union between individuals of different genders, or should it encompass same-sex partnerships? Is monogamy, rooted in Christian tradition, an inherent aspect of marriage, or can marital unions involve more than two individuals? Furthermore, do traditional notions of spousal roles still factor into the contemporary understanding of marriage? (Foblets, 2007)

Court decisions are particularly illuminating as they frequently address issues for which legislatures have yet to devise legal remedies due to their hesitance, insufficiency, or delayed response to multicultural phenomena.

The dissertation presents a central argument. The primary contention is that, in addressing cultural diversity, the courts uphold certain principles that impede the complete and equitable inclusion of various religious and cultural groups. These 'universals' may take different forms and operate at different levels, but they all adhere to the same exclusionary logic: the experiences of some are equated with the experiences of all and are used as the standard by which everyone is evaluated. Indeed, the concealed (and sometimes overt) workings of such 'universals' have not only resulted in the trivialization and marginalization of applicants' experiences but, more alarmingly, have at times led to the depreciation or delegitimization of these experiences.

In the initial, introductory chapter, the goal is to outline the primary themes and contexts that will be explored throughout this study, delineating key arguments essential for the subsequent analysis of the theoretical framework and qualitative data gathered in the field.

Within the context of examining the intricate relationship between cultural diversity and the legal system, numerous fundamental inquiries emerge. These inquiries revolve around the judiciary's capacity to navigate cultural diversity, the integration of cultural concepts into legal discourse, and the approaches taken by the legal system towards the concept of culture. Moreover, comprehending the conceptual frameworks utilized in managing socio-cultural diversity within the legal domain becomes paramount. These questions probe into the significance of culture, its intersection with the law, and the pragmatic approaches to addressing these complex issues.

In both political and judicial realms, culture and cultural assertions have become pivotal concerns. As the frameworks guiding justice evolve and the complexities it presents increase, the role of justice in effectively managing cultural diversity within societies is gaining heightened significance. Within this chapter, the extensive thematic framework outlined thus far provides a contextual backdrop for identifying the research questions that have guided this study.

Building upon these introductory thematic considerations, which precede, motivate, and underpin my research, this study aims to explore the assessment, perception, and management of cultural aspects by legal professionals, specifically lawyers and judges. The project's objective is to examine how the cultural dimension is addressed within the Italian legal framework, focusing on family and juvenile courts in Milan. The goal is to comprehend how lawyers and judges perceive, evaluate, and navigate sociocultural diversity in their everyday decision-making processes. How do legal professionals incorporate culture into their practices? What understandings of culture emerge from their approaches? Do they deem cultural background relevant in specific legal cases? Do they

consult experts, and based on what criteria? What forms of knowledge are considered expertise in cultural matters? Furthermore, what tools are deemed necessary for lawyers and judges to better comprehend and evaluate the cultural dimension within the broader legal context?

As presented in the second chapter of this work, the intricate interplay between culture and decision-making within the legal domain, involving both lawyers and judges, necessitates a thorough exploration spanning sociological inquiry, legal theory, and cultural studies.
This chapter focuses on examining the theoretical framework delineated by the structure-agency dichotomy. It investigates the tension between established legal norms, conventions, and institutional practices (referred to as the 'structure') and the independent judgment and decision-making abilities of legal professionals, including lawyers and judges (referred to as the 'agency'). Culture, as defined in the initial chapter of this work, emerges as a pervasive and influential factor, extending beyond just immigrant individuals involved in legal proceedings. It profoundly permeates the legal landscape, encompassing shared norms, values, beliefs, and practices deeply ingrained within societies and communities. Lawyers and judges, the primary actors under scrutiny in this research, inevitably function within this culturally enriched context. As a result, their actions and decisions, while demonstrating varying degrees of individual discretion, are undeniably influenced by the cultural milieu within which they practice law.
Thus, the objective is to grasp and negotiate the complex interplay of decision-making dynamics, the subtleties of organizational intricacies, and the pervasive impact of both internal and external legal norms. These components intersect within the esteemed realms of legal establishments, constituting the core of our investigation into the essence of legal proceedings and the dispensation of justice. They serve as pivotal factors that will subsequently facilitate the contextualization and positioning of the empirical analysis of the gathered data.

The creation of law extends beyond the domain of legal authorities and courts alone. Ordinary individuals, especially those directly impacted, actively participate in applying legal principles in their daily lives. In this regard, laws are not confined to a static written form, nor are they merely tools for societal control or resolving legal disputes. Instead, society interprets and shapes laws to regulate individual and collective behavior. Furthermore, legal professionals within the justice system are integral components of the social fabric, influenced by and contributing to the same societal context governed by the law. In this milieu, individuals and societal actors establish links between political, social, and other contextual elements that shape legal doctrines and concepts, infusing them with significance. Consequently, legal norms should not be seen as

restricted to their textual expressions; rather, they necessitate examination within the broader social frameworks guiding their application and operation. By embracing this contextual viewpoint through the epistemological approach presented here, intriguing dimensions of legal institutions, the law itself, and legal practice can be revealed.

Coming now to the concrete articulation of the research design (illustrated in the third chapter), the adoption of an analytical perspective necessitates choices oriented towards the adoption of a qualitative approach, characterized by the use of semi-structured interviews and the analysis of documents, specifically judgments. Semi-structured interviews served as the primary mechanism for acquiring insights from pivotal figures, particularly lawyers specializing in family and juvenile law within the IX section of the Milan courtroom. These interviews offered crucial contextualization and understanding of the prominent issues interwoven with cultural diversity and the legal system. Additionally, they yielded a substantial dataset for comparative analysis with subsequent examinations of judges' viewpoints, allowing for an in-depth exploration of participants' personal viewpoints and fostering a more personal and direct exchange.

The examination of the judicial decisions laid the groundwork for an alternate form of analysis. As judgments are texts crafted for purposes differing from those of my inquiry, they afforded an opportunity to delve into an analytical domain focusing on how categories are comprehended and construed within this framework. This entailed exploring the interpretations of concepts like family, children, and childhood, employing critical discourse analysis.

The fourth and fifth chapters, therefore, constitute the empirical analysis of the data collected through interviews and the analysis of judgments.

In the fourth chapter, following a brief overview of the research inquiries and methodology, participant demographics are presented to provide a contextual framework for subsequent responses. The ensuing section delineates the primary themes extrapolated from the interviews, underscoring their alignment with existing literature and previously outlined theoretical concepts on the subject.

The insights shared by participants unveiled a nuanced comprehension of 'culture,' which, while not explicitly articulated in their own words, became apparent through the analysis of emerging themes. Notably, it underscores a perception of culture among lawyers and judges that surpasses a binary distinction between 'our' and 'their' culture, at least upon initial examination. Instead, emphasis is placed on conceptions of culture directly linked to the legal and organizational milieu within which judges and lawyers operate. Three operationalized dimensions or facets are identified: 'culture as

communication,' 'culture as context,' and 'culture as norms,' reassessing the practices and attitudes discerned from judges' testimonies within the framework of the concept of legal culture.

Exploring the realm of family and juvenile law offers valuable insights into the nuanced impact of varied cultural backgrounds on legal deliberations. Legal professionals consistently highlight the difficulties inherent in addressing linguistic and communication barriers, assessing parental capabilities, and navigating complex familial dynamics influenced by cultural diversity, emphasizing the significance of involving external individuals like interpreters and cultural mediators, yet the clarity and institutionalization of their roles remain uncertain.

In the last chapter of this work judgments are analyzed. The judgment serves as a distinct form of textual discourse regarding the legal process—an avenue through which the judge's decision emerges as the outcome of a series of choices influenced by both external and internal information within the legal framework, guided by adherence to rules. Against this backdrop, legal texts typically maintain an objective and neutral tone, often stemming from a position of legal authority or expertise, which masks their discursive and constructive nature. Before delving into the detailed analysis of judicial decisions, an introductory overview of the selected judgments and their significance is provided.

Through critical discourse analysis, language is seen as a medium of social construction, capable of both reflecting and shaping social realities, identities, and knowledge (Silva Nino de Zepeda, 2022). The decision to utilize critical discourse analysis in this research was deliberate, driven by its suitability for the multifaceted nature of the study. Analyzing the language and discourse found in judicial decisions through discourse analysis proves to be a compelling method for understanding the judicial perspective and behavior.

Initially, the chapter undertakes a nuanced exploration of the cultural context permeating the selected decisions. By identifying and analyzing cultural contexts embedded within the judicial documents, the aim is to unveil the diverse layers of diversity as they emerge within legal proceedings. Additionally, building upon the initial methodological framework, Critical Discourse Analysis (CDA) serves as a vital analytical tool to further delve into the intricacies of these judicial decisions. Through CDA, this research project meticulously examines the language, terminology, and narrative constructs used in the legal texts. This form of analysis considers the subtle nuances and connotations embedded within the linguistic choices made by judges, often shedding light on the implicit power dynamics, assumptions, and ideologies underlying legal interpretations.

1. Law and Culture: Balancing Diversity within Legal Frameworks

The aim of this introductory chapter is to propose the main themes and contexts of reference that will be dealt with in the course of this work, defining the main arguments useful for the subsequent analysis of the theoretical framework of reference, and of the qualitative data collected in the field.
In the context of addressing the complex interplay between cultural diversity and the legal system, several fundamental questions arise. These questions pertain to the judiciary's ability to navigate cultural diversity, the incorporation of cultural concepts within legal arguments, and the ways in which the legal system approaches the concept of culture. Additionally, understanding the conceptual frameworks employed when managing socio-cultural diversity within the legal realm becomes crucial. These queries delve into the significance of culture, its connection with the law, and the practical solutions to these intricate issues.

Historically, a clear distinction is made institutionally and analytically between other domains and the legal one, culminating in the ideology of "legal centralism" (Griffith, 1986), which subordinates all other orders in a hierarchical way (Shah, 2020). However, in order to assume a more complex and conscious justice, and to tackle the difficulties and challenges of societies where multicultural litigation is at stake, it is crucial to foster a fruitful dialogue between law and social sciences, although and due to the fact that they exist within different methodological and epistemological fields: "they have different aims […], different ways of dealing with the diversity of human behavior […], different methodologies for gathering knowledge […] and, sometimes, even different ideas of what culture is" (Dauth & Ruggiu, 2020).
To effectively grapple with these questions and explore the intricate relationship between cultural diversity and the legal system, the field of sociology of law proves to be indispensable. This perspective hinges on the foundational premise that law is not a static, isolated entity but rather a dynamic construct intricately interwoven with the broader sociocultural fabric. This perspective aligns with the sociological insights of eminent scholars like Emile Durkheim (1893) and Max Weber (1922), who underscore that law is a dynamic product, molded by the society and culture in which it is situated. Consequently, studying the law necessitates an understanding of the ever-evolving societal context and the profound influence of culture on legal processes and norms.

The focus of this study lies in the realm of cultural diversity associated with migratory movements and immigrant populations, primarily because terms like "cultural diversity," "multiculturalism", and "multicultural society" are frequently employed in European discourses and policies concerning migration (Mancini, 2018).

To introduce the outlined questions, it is necessary, first of all, to define the term culture and how it is meant and used in this work. To comprehend the pregnant importance that the connection to culture conveys, we must turn to anthropological studies: in the political and everyday discourse of Western nations, the concepts of "culture" and "cultural difference" have essentially been defined as authentic "stock-in-trade" of anthropological study.

1.1 Rethinking Culture: From Anthropological Foundations to Contemporary Conceptions

Culture, which is increasingly at the center of intellectual (and not only) reflections outside the discipline of anthropology, is at the heart of reflections on multiculturalism in the world of law as well, as we have seen. In the field of anthropology, the debate on the meaning of 'culture' has been and is very broad, with different schools of thought confronting each other and each proposing a different definition of the concept.

Over the course of the field's development, anthropology's understanding of culture has experienced substantial modification and improvement. Evolutionist viewpoints were held by early anthropologists like Lewis Henry Morgan and Edward Tylor. In particular, Edward Tylor, an English anthropologist, is often credited with providing one of the earliest formal definitions of culture. In his work "Primitive Culture" (1871), Tylor defined culture as:

> Culture or civilization, taken in its wide ethnographic sense, is that complex whole which includes knowledge, belief, art, morals, law, custom, and any other capabilities and habits acquired by man as a member of society (Tylor, 1871, p.1)

They postulated that human cultures developed via a series of discrete stages, moving from barbarism to savagery to civilization. This ethnocentric worldview assumed that Western nations were the pinnacle of progress, and due to its inability to take into consideration the great diversity and complexity of human civilizations, this approach has largely been abandoned.
By presenting the idea of cultural relativism, Franz Boas—often referred to as the father of American anthropology—played a crucial part in turning the paradigm.
In the early 20th century, anthropology in North America and Britain displayed marked differences in their philosophical orientations and methodological approaches. In the United States, American anthropology was heavily influenced by the ideas of Franz Boas, who stressed the significance of

culture and its diversity. He encouraged researchers to document the unique customs, languages, and traditions of various societies. This led to a strong emphasis on studying cultural diversity, and it fostered the notion of cultural relativism, which posits that each culture should be understood within its own context without imposing outside judgments or comparisons. Boas worked to disprove the notion of cultural hierarchy and emphasized the idea that cultures should be understood in their own historical and environmental circumstances. His research helped to establish the idea that every culture is distinct and formed by the particular historical, geographic, and social circumstances in which it exists. Leading anthropologists who did cross-cultural research and recorded the differences in human behavior and customs, such as Ruth Benedict and Margaret Mead, served as examples of this strategy, which was consistent with the notion of culture as a core concept.

On the opposite side of the Atlantic, academics such as A.R. Radcliffe-Brown and Emile Durkheim had an impact on British anthropology. The main themes of Durkheim's theories were social structure and the influence of institutions on behavior. This prompted an emphasis on comprehending the structure of societies and the ways in which social institutions shaped the behavior of individuals. By supporting a strict approach of in-depth research and highlighting the significance of documenting the social structures of the societies being studied, Radcliffe-Brown advanced this viewpoint. British anthropologists preferred a synchronic perspective, which implies that instead of tracking historical shifts or cultural progress, their goal was to understand societies at a particular point in time.

Whereas the name of Radcliffe-Brown is associated with the school of structuralism, the name of Malinowski is known as one of the most important proponents of functionalism. The historical approaches were strongly opposed by certain research schools that emerged in the period between the two world wars, and in many cases, they were completely disregarded. Malinowski's adherents were among the cultural functionalists who held that defining the role that facts now played in a particular culture was the only way to explain them. They believed that understanding a culture as a whole and the inherent connections between its many components ought to be the ultimate goal of all cultural anthropological study. In light of the fact that every culture has a distinct reality, the comparison was absurd. Moreover, culture was to be understood at a specific moment in time, disregarding the provenance and age of the constituent parts. The role the elements performed at this point was the only thing that mattered. Prior to now, cultural anthropologists had spoken of "survivals," or practices or other cultural characteristics that had persisted from antiquity but were now meaningless or had lost their true significance.

The two schools developed almost independently of each other, and different generations of researchers have, over time, emphasized the importance of culture on both fronts: “British anthropology has tended to see culture as a marginal and contingent by-product of society while American anthropology has stressed the uniqueness and diversity of societies” (Holden, 2019, p.4).

But does it still make sense to talk about culture today? One might be inclined to answer that it makes sense to talk about culture today, in contemporary multicultural societies, for many different reasons. Because a sort of 'hypersensitivity' to cultural diversity seems to have asserted itself, leading individuals and groups to think of themselves and others mainly in relation to their respective cultural identities (and differences). Because this 'hypersensitivity' often risks degenerating into a sort of 'cultural racism'. Political exploitation aside, the recognition of cultural differences sometimes raises problematic legal issues. Because, finally, cultural differences (their meaning as well as the terms and limits in which they can or should be recognized and valued) are at the center of some of the most heated and controversial philosophical-political debates of the last thirty years, such as those on multiculturalism and the so-called 'recognition policies' (Remotti, 2011; Parolari, 2012). All these reasons help to clear the field of misleading and dangerous prejudices and stereotypes that foster the now widespread rhetoric of the 'clash of civilizations' (Parolari, 2012).

What is culture then? As briefly outlined, the concept of culture, from an ethnographic point of view, has undergone profound changes over time, going from positivist and naturalizing conceptions, typical of the first core of anthropological ethnographies, to the present day, which is densely deconstructive, in which the concept of culture becomes processual and fluid, and in a relationship of mutual construction with the point of view of the researcher, whose eye does not grasp objective data, but interpretations of interpretations (Geertz, 1973).

As emerges from the long overdue debate in the social sciences, giving an unambiguous definition of culture still remains complicated. However, there are some aspects on which disciplines such as anthropology almost agree. Cultures are open and closed, they are selective and communicative, dynamic and internally differentiated; they are creative and the product of historical processes of encounters, exchanges, and borrowings. They are a complex of handed down, acquired, but also selected models and have no clear, precise, identifiable boundaries, reason why culture cannot be identified as defined once and for all and always identical to itself.

Clifford Geertz, a prominent American cultural anthropologist, presented an interesting and agreed definition in his influential work "The Interpretation of Cultures", which was first published in 1973. His understanding of culture can be viewed as a network of meanings that individuals use to

interpret the significance of their actions. The social dimension of this network might be understood as a horizon composed of common narrative descriptions that are also debatable and contentious.

It does not seem pointless to move on to a brief examination of the most important interpretations suggested after acknowledging that the substance to be assigned to the term "culture" must also be the result of a choice. It has been noted, as a preliminary remark, that many of the definitions suggested do not seem adequate, since they start from incorrect conceptual premises, as happens when cultures are identified with clearly describable realities with precise boundaries: the risk posed by these approaches is that of objectifying cultures as separate entities, forcing a depiction of them as clear and compact realities which, in the collective representation, can only exceed the individual representations of each culture.

Many anthropologists denounced the 'worn-out' and 'politically compromised' nature of the concept of *culture*. In particular, from the 1970s and 1980s onwards (at a time when political philosophy was beginning to discuss multiculturalism), criticism of the 'essentialist' concept of culture multiplied, i.e. the concept according to which culture would be closed, static, coherent, and uniformly shared within a society; an entity in its own right, endowed with its own life and autonomy, capable of shaping the personality of individuals and strongly conditioning their behavior, beliefs, and choices (Remotti, 2011; Parolari, 2012). In most cases, these criticisms do not translate into a rejection of the concept of culture as such but, rather, into attempts to redefine it in terms that emphasize the hybrid, complex, and dynamic character of cultures.
For example, with Clifford Geerzt (1973), the focus of anthropology shifted from the social sciences, which were concerned with describing objectively measurable aspects, to the humanities, which explained social phenomena 'subjectively' and interpretively, understanding culture as a network of meanings, leading to a reflexive position, in which no objective account of culture is deemed possible any longer (Holden, 2019).
In some cases, on the other hand, some anthropologists propose, in no uncertain terms, to abandon the concept of culture, arguing that not even a redefinition of it would be sufficient to correct the essentialist tendencies and racist drifts inherent in the now widespread way of thinking about culture. In fact, it is the very concept of culture that, according to these anthropologists, has contributed to fostering prejudice and stereotypes. According to Lila Abu-Lughod (1991), for example, the concept of culture shares with concepts such as race the tendency to 'freeze' differences and is, therefore, the privileged instrument through which many anthropologists have contributed to 'make' the idea of an 'other' as opposed to an 'us'.

As Unni Wikan (1999) points out, the concept of culture has been politicized and hollowed out, entering the public arena in ways that undermine the well-being of many people and society itself; a misuse of culture masquerading as 'respect' or in other cases exploited as a subterfuge to achieve personal ends, abuse of power and, of course, racism. Frantz Fanon (1988) described the shift from biological to cultural explanations for racial subordination as a progression from vulgar to cultural racism. Culture, Wikan continues, has become a new concept of race, which reduces 'others' to beings less human than 'us', as they are unable to respond to the surrounding challenges actively and with agency, as if blocked and guided in their actions exclusively by the culture they belong to.
Immigrants themselves, sometimes, have actively appropriated this model, which sees the human being as a product rather than a cultural agent, degrading the individual on the basis of ethnic/cultural affiliation and thus conforming to the much-contested racist approach.

> Why would immigrants reappropriate a reductionist model of them? The answer is complex. [Blinded by what they can gain, personally, materially and/or politically by presenting themselves as culture-driven, many immigrants are naturally willing to do so. The government encourages the strategy. Committed to a policy of "respect for their culture", immigrants are perceived as uniform carriers of culture conceived as a static object. This paves the way for eloquent spokesmen to enter the arena and proclaim - in truth - what is "the culture" (Wikan, 2007, p.58).

Therefore, it is clear the difficulty to consciously use the term *culture.* It is precisely in light of these more radical critiques that Remotti (2011) proposes “to revise this concept in-depth [and] to identify more precisely the reasons for the [racist] drifts that so preoccupy, and rightly so, the most circumspect anthropologists” (Remotti, 2011, p.VI); at the same time, he adds, it is good to realize that “the reason [for these drifts] is not in the concept of culture, but in the use that is eventually made of it” (Remotti, 2011, p.VII).

In the essay “Writing for Culture”, Brumann (1999) makes the case that the concept of "culture" should not be abandoned because, given its widespread use, it represents a tool of the communicative economy capable of promoting dialogue with the various subjects who, on a social, political, or legal level, are challenged by the issue of cultural differences.
Only by maintaining an open line of communication with these issues would it be feasible to make an effort to refute the false presumptions of those "cultural fundamentalists" who, like Huntington, worry about a collision of civilizations. Such a defence of the concept of "culture," such as the one being discussed, does not consist in claiming that cultures are closed, homogeneous, and

unchanging, but rather in highlighting the fact that these qualities are not necessarily indicated in all of its definitions.

1.1.2 Law as a Social Phenomenon

Having defined what is meant by using the term culture, in this work, it is necessary to understand in which way sociology can help to further develop crucial issues in theoretical studies concerning the nature of law.
According to Cotterell (2006),

> Every significant conception of law treats it as in some sense a social phenomenon, acting in and relating to social life. All significant legal theory studies law systematically and, in some sense, empirically. What distinguishes sociological approaches, however, is that they insist that this cannot be done without studying, no less systematically and empirically, the nature of the social. Here, the "social" means the patterns of human connections and interactions in relation to which law exists and which in some way it expresses and regulates. Law is part of social life (Cotterell, 2006, p.29).

Therefore, here is the meaning of a sociological interpretation of legal ideas. Law is a social phenomenon and a field of experience, meant and understood as an aspect of social relationships in general since it concerns the positioning of individuals within social groups.
Sociology of law and legal anthropology have long studied the difficult relationship between law and culture, and today it seems to have become a crucial issue in many kinds of juristic inquiries since judges and lawyers face multicultural disputes or simply cases in which the cultural element appears to be relevant.
The social body, increasingly articulated and complex, poses difficult requests to the legislative power, which delegates to other regulatory sources this difficult task. Therefore, it appears to be necessary to create a diversity-sensitive conceptualization of justice, able to grant access to and active participation in civil society and, moreover, to take into consideration diversities (of all kinds) within our societies (Bhamra, 2011). Moreover, problems posed to the law by linguistic, religious, and cultural diversity and the ways in which it responds to it vary not only between national legal systems but also between the branches of law (constitutional law, family law, criminal law, labor law, etc.) concerned.

Since the 1990s-2000s, an increasing number of authors have therefore been interested in the legal treatment of religious or cultural plurality within individual countries[1]. Nevertheless, it seems possible to identify, across the various national legal systems and disciplines, a number of recurring issues, from which cultural diversity can be reconstructed as a specific object of legal study (Ringelheim, 2011).

Migration phenomena bring inevitably to the coexistence of many culturally different communities in every society: immigrant communities, national minorities, and indigenous people (first nations), or even all of them together. Considering that the official number of resident immigrants in Italy are currently 5.308.000[2] people, it is clear the crucial need to deal with cultural diversity.

Legal pluralism and cultural diversity are therefore something that characterizes our more and more interconnected societies. The latter are replete with infinite forms of plurality and diversity and, what is more important, there is an increasing consciousness of the challenges that this plurality presents. Culture and cultural claims have emerged as a crucial arena of political and judicial controversy, considering at least three levels, namely policy changes in standard interpretation, changes in the law, and court ruling (Van Rossum, 2007). It is clear that the structures within which justice operates change and evolve, as well as ideas about justice itself, the challenges it poses, and the demands that citizens make upon it (Bhamra, 2011). This gives justice a crucial importance in the current debate on the management of cultural diversity within societies.

Discussions on the relationships between law and culture, legal practice, and cultural diversity might intersect different kinds of knowledge, such as different analytical levels and theoretical frameworks. Such discussions are not just a matter of lawyers, judges, and texts, but instead involve many different social actors, both outside and inside strictly legal processes[3].

[1] For further readings, see Shah (2007); Van Rossum (2007)

[2] Total number of resident immigrants in Italy on 1 January 2023. http://stra-dati.istat.it

[3] According to Ballard et al. (2009): "New issues are entering the legal arena requiring fresh interpretation or reinterpretation of existing law; new arguments and justifications are proposed, such as 'cultural defence'; New demands by individuals or collectivities for special rights or treatment test the legitimacy of long-established principles such as 'equality before the law', which may no longer be seen as self-evident; accepted values, e.g. concerning the relationship between the secular and the religious, may be contested; How the law is applied to particular minorities may become a matter of heated debate in political and religious circles within both minority and majority populations and may lead to strong public reaction, e.g. in the media; New types of inequality of power with respect to the law may become apparent. Minorities may not know how the law protects them, or how courts work; New or relatively new values, e.g. stemming from movements on behalf of human rights, or more specifically the rights of women and children, are being institutionalized and endowed with legislative authority, nationally and/or internationally, with implications for the daily lives of migrants and their descendants. Sometimes these developments benefit minority populations, sometimes they have a negative impact, limiting the extent to which cultural difference may be taken into account by courts; National legal systems are increasingly affected by international legislation and decisions, as with the growing influence on judicial decisions of the European Court of Human Rights (ECtHR) and the interpretation of Article 9. This tests the adequacy of approaches to law grounded in 'methodological nationalism'

There are of course many ways in which diversity and law daily interact. Here, it is going to be deepened the debate on cultural difference and civil law, within the frame of court ruling, concerning family law and the juvenile court in the Italian legal framework. The importance of judicial courts is clear: they play the crucial role in giving space of encounter and place for tension among different legal traditions and distinct cultural spheres, contributing to the academic discourses and enriching the possible interdisciplinary dialogue among social scientists and legal scholars and practitioners.

According to Vega, Ruggiu and Spigno (2020), the importance of judicial decisions and activity has achieved a new and important position within the legal sources system, helping the evolution and affirmation of an entire set of rules, principles, and rights that reinforce through constructive judicial interpretation.

> Judges, consequently, have become the true new protagonists of this dynamics. In particular, as far as fundamental rights are concerned, judges are those who, ever more immersed in cosmopolitanism, are in a more adequate position compared to the legislator for the elaboration of shared solutions to emerging challenges not yet addressed by the Legislature. This is because, in the global perspective, "judicial law" seems to be lighter than statutes and formal law in general: the judicial activity implies a very flexible decision-making capability, which moves between activism and compliance, between law creation and self-restraint, between strictness and flexibility, and feeds not only on formal tools, like judgements, but also on a level of "informal communication". Thus, judges and lawyers play a key role in dealing with multicultural conflict(s) and with the intercultural understanding of human rights. (Vega et al., 2020, p.11)

Reasoning about the relationship between law and cultural diversity, however, is not trivial. Traditionally, legal science has ignored cultural plurality, both when it conceives of law as a system of formal, rational rules dominated by instrumental reason, thus leaving the cultural factor out of its analysis, and when it assumes the existence of a homogeneous national culture, which law would merely reflect. As noted by the British legal sociologist Roger Cotterrell (2007), in this way culture remains largely invisible to the law, either because it is considered irrelevant to legal reflection, or because it is seen as uniform and therefore unproblematic. To question the impact of cultural diversity on the law, therefore, implies moving away from both of these orientations, recognizing, on the one hand, that cultural plurality is part of the current social reality that the law strives to regulate and, on the other hand, that it constitutes a legitimate and relevant object of study for the jurist as well as the legal theorist.

In conclusion, the most important and, at the same time, the most complex problem for law is that of balancing equality and differences,' writes Cotterrell (2007). Contemporary law is torn between,

on the one hand, a tendency to promote uniform rules and, on the other hand, factors that cause certain individual or collective particularities to be taken into account. This conflict is particularly manifest in situations where the law is confronted with the reality of the diversity of languages, religions, or traditions. All European democracies agree in recognizing the fundamental character of legal principles such as equality, respect for individual freedom, and the neutrality of the state. However, their interpretation may vary from state to state. And within the same legal system, the consequences they draw in concrete cases can be a matter of debate. While in some cases judges and legislators favor the identity of treatment and the affirmation of a common rule, in other cases they may be sensitive to the diversity of situations. In any case, this is a discussion that goes beyond the realm of law and affects society as a whole (Ringelheim, 2011).

In order to explore such issues, it is first of all necessary to introduce some conceptual tools, useful to further analyze the collected data within some analytical framework concerning socio-cultural diversity and multicultural society, in relation to justice and law.

1.2 Transnationalism, Multiculturalism, and Cultural Diversity

The typical modern view of Western lawyers is apparently not difficult to characterize. First of all, the State and its agencies are seen as central and law is seen as monistic in form, and not pluralistic. Then, the law's autonomy is assumed, both as a normative order and as an object of study or science, distinct from the social or empirical social science. It then assumes that state law produces a practical difference, having effects within the society, and finally defining the legal field settling internal/external distinctions between legal insiders and outsiders (Cotterrell, 2009).

However, as Cotterrell (2009, p.483) pointed out: "Each of these views of law was challenged in profound ways by the pioneer theories of legal sociologists early in the twentieth century". In fact, from the very beginning, the sociology of law stresses the fact that law is a social construction, so its form, autonomy, organization, rules etc. are the result of specific historical, cultural and social factors. Within a modern view that assumes the Nation State as the only legitimate producers of law and judiciary decisions, we can observe a specific treatment of culture and legal diversity, questioning juristic ideas of the legal system and unity, and that of centralized legal authority. Thanks to it, a tradition of legal pluralist theory that considered normal an overlapping of distinct regulatory systems in the same social context was developed, treating as ordinary the competition for authority in such fields (Cotterrell, 2009).

It is therefore important to consider the current arena of how the law is perceived and dealt with in a given society, stressing how it reacts to changes and diversities within the frame of justice and law.
In this context, accommodation of diversity is a wide-ranging process that operates not only involving those engaged in justice and law, although they are of course crucial and the focus of this work. There are in fact also other figures – directly or indirectly – involved in the law, such as expert witnesses or social work practitioners, who actually also play a crucial role.
Throughout Europe, "[…] accommodation has often involved two complementary strands, both generally accepted, but neither uncontested. One strand is to allow specified exceptions, e.g. Sikh turbans, rather than according wholesale recognition, as in the Indian personal law system. A second involves increasing the sensitivity of legal actors to diversity, principally through training" (Grillo, 2009, p.20).
Identity and citizenship cannot be reduced to a territory's ontology; rather, they incorporate a wide range of migratory histories, social strata, and economic positions, as well as affections and feelings. These result in a range of relational behaviors that differ in accordance with the biographical statuses, trajectories, and subjectivities that are uniquely related to migration.
Overall, dealing with accommodating cultural and religious diversity means addressing the discussion through three main frameworks, that can be perceived as explanatory and conceptual tools, as well as a more normative stand. These three concepts, namely *transnationalism*, *cultural diversity*, and *multiculturalism*, are not necessarily exclusive to the others, while instead they might be considered complementary (Foblets & Vetters, 2020). Each of these three frameworks can help to underline the important and specific role of the judiciary in the present-day plural society.

1.2.1Transnationalism

Social life is something not circumscribed by nation-state boundaries. According to Vertovec (1999), "most social scientists working in the field may agree that 'transnationalism' broadly refers to multiple ties and interactions linking people or institutions across the borders of nation-states". In spite of great distances and the existence of international borders (and all the laws, regulations, and national narratives they represent), transnationalism is the term used to describe a situation in which certain types of relationships have become more intense globally and now paradoxically take place in a world-spanning yet common -- though virtual -- arena of activity (Vertovec, 1999). The analytical field and lens must be necessarily broadened since migrants are often part of multi-sited and multi-layered transnational social fields (Levitt &Schiller, 2004).

There are several different foundations for what transnationalism means[4]. The definition of transnationalism that sociologists and anthropologists have perhaps been paying the most attention to has to do with a type of social formation that transcends borders, such as what concerns ethnic diasporas (Vertovec, 1999). Moreover, besides new dialectics of international and local issues that exceed the scope of national politics, transnational corporations (TNCs) are often regarded as the primary institutional form of transnational practices and the key to understanding globalization by economists, sociologists, and geographers.

The focus of great attention was also a type of "diaspora consciousness" characterized by dual or multiple identifications, notably in works about global diasporas (especially within Cultural Studies).

Basically, all transnational fields of study—whether focusing on corporations, non-governmental organizations (NGOs), religions, migrants, or other social groups—share a kind of common objective: to empirically examine and analyze transnational activities and social forms, as well as the political and economic conditions that affect their emergence and continuation (Vertovec, 2003).

> Today transnationalism seems to be everywhere, at least in social science. […] Since the early 1990s, research on transnational dimensions of migrant experience has expanded. There is now a substantial, and growing, body of literature concerning the ways migrants' lives are affected by sustained connections with people and institutions in places of origin or elsewhere in diaspora (Vertovec 2003, p.641).

Legal situations involving ethnic, cultural, and religious minorities are particularly significant here. Immigration often brings with it families, individuals, and sometimes whole communities seeking to live transnationally, so the world of migrants and refugees is often multi-jurisdictional and trans-jurisdictional in terms of legal expertise. Some people try to maintain practices potentially at odds with those of the societies in which they are embedded, raising the concern of the public and the legal world.

The worldwide increasing flow of capital and the interdependency of national economies and states, together with the migratory phenomenon, have brought what has been called *transnational legal processes*. Such processes influence the state, the law, and normative frames, as well as institutions, and, for this reason, the attention paid to them by socio-legal studies is increasing (De Hart et al., 2013).

According to Foblets and Vetters (2020),

[4] To further develop this issue, see also Castells (1996), Hannerz (1996), Appadurai (1995).

> [Communities] organize themselves with the help of social ties that are not limited to a single jurisdiction (i.e. a state). Such transnational ties can be loose, and at times extremely volatile, but they can also be persistent, so stable that they can even become oppressive. Oppressive ties do not permit individuals to escape control by the community, and if one attempts to do so, it is not without severe consequences. One such consequence is exclusion and the loss of every form of further support from other members of one's community. On the other hand, transnational ties also allow individuals and households to mobilize crucial material and immaterial resources (such as remittances, care work and knowledge) (Foblets & Vetters 2020, p.80).

Within the field of socio-legal studies, taking into consideration legal transnationalism as an analytical framework helps to describe two main phenomena: the effects of cultural, political, and economic pressures – coming from outside nation-state borders – on internal regulatory activity, and the emergence of supranational regulatory regimes. Consequently, it is clear the need to take into consideration the cross-border characteristic of rules and entire communities, when domestic decision-making is at stake (Foblets & Vetters, 2020). In this sense, transnationalism is becoming more evident in the domain of family law: families that may have migrated for different reasons, or that may have ties with migrants, directing therefore the focus to a wide and extended concept of family living across borders. Therefore, transnational families are possibly influenced by many different sets of institutions and law (De Hart et al., 2013). Since transnational ties are more and more common for families, a quite complex regime of private international law also has evolved, bringing judges to have adequate knowledge concerning family law and practice in a wider range of jurisdictions, although it is a difficult and even unrealistic task (Foblets & Vetters, 2020).

The family constellations that result from a combination of history, demographics, and mobility are as varied as the causes of their emergence, and the resulting legal complications are no different. They can result from cross-border mobility, where one or more of the parties are living, temporarily or permanently, as foreign nationals in a country other than the one whose nationality they hold. They may also result from relationships among family members who do not have the same nationality or where one or more of them holds several nationalities. They could also be the outcome of migrants traveling abroad to escape conflict. Furthermore, even though they still hold the nationality of their home country, family members are increasingly obtaining the citizenship of the place in which they now reside. These kinds of constellations include many more. These circumstances could be viewed as the inevitable result of continuing cross-border interactions with the emigrant nation in a world where communication tools are becoming more widely available and contacts are consequently becoming

more frequent, dense, and comprehensive. In order to analyze and bring to light different cross-border realities, more and more common for an increasing number of communities and individuals, the sociological literature refers to the conceptual framework of "transnationalism," meaning that they involve families that, because of their structure and/or makeup, must contend with the—often significant—differences between legal systems (Yassari, Foblets 2022).
Rather than a new paradigm, therefore, transnationalism is today a complementary key to the others, useful for highlighting social attributes and practices present – albeit to varying degrees – in most international migration flows (Boccagni, 2009).

1.2.2 Multiculturalism and Interculturalism

The term 'multiculturalism' was coined in Sweden in 1957, although it was Canada that first officially used it and made it its own, adopting it as early as the 1970s in fundamental regulatory texts to describe its policy. Depending on the contexts in which it is used, the term multiculturalism can take on different meanings: the discussion is open, frequently muddled, and perplexing due to the multiplicity of meanings behind the concepts (Grillo, 2009). Some use it to indicate a fact (also indicated as multicultural societies) - namely the presence, within the same social, political and legal space, of a diversity of religious and cultural groups -, others a certain political response to this reality, and still others a theory of justice. In the social and political sciences, it is the second of these meanings that prevails. As a more normatively oriented framework, it is mainly used to determine “the extent to which minority cultural, ethnic, religious or linguistic groups deserve special acknowledgement of their differences within a dominant political culture and system” (Foblets & Vetters, 2020, p.83). It is sufficient, for our purposes, to note that the qualification of a political and institutional strategy in the sense of "multiculturalism" takes on a precise meaning, which differs from the simple awareness, from the "ascertainment" of the existence of a variety of cultures within the population, to refer instead to a well-defined approach to public relations with respect to the different cultures.
The notion then becomes part of the debates on national models of citizenship and integration. As a political response to diversity, multiculturalism traditionally opposes both the assimilationist or republican model and the ethnocultural or differentialist model[5]. Whereas differentialism is based on an ethnic view of the nation, which keeps members of cultural minorities in the status of foreigners, multiculturalism and assimilationism both aim to integrate people of immigrant origin

[5] For further readings see Castles (2000); Favell (2001).

socially, economically, and politically, but according to different logics. The assimilationist model wants the integration process to go through the reduction of cultural differences. As mentioned above, multiculturalism aims on the contrary to achieve this by recognizing and valuing diversity. In practice, it translates into a series of measures that vary from state to state, such as the 'accommodation' of certain general rules to allow the practice of minority religions, the adoption of anti-discrimination programmes, the granting of subsidies to associations created by ethnic minorities, or the revision of school curricula to reflect the plurality of the population[6]. As a conceptual framework, multiculturalism is characterized by a stronger normative orientation, in comparison with the notions of transnationalism and cultural diversity, since it accommodates the idea of how relationships between majority and minority groups ought to be directed (Foblets & Vetters, 2020).

The paradigm, which has been historically influenced by neoliberalism and is frequently linked to a liberal philosophy, places an emphasis on the protection of minority culture and individual rights and is considered a response to the integration problems minorities have had in Western nations (Kymlicka, 2016). The strategy risks however inciting resistance in a majority that may feel threatened by minorities and strengthens essentialism, reifies group differences and stereotypes, and is insufficient to solve the issues of cultural diversity, according to Kymlicka (2016).

In political philosophy, discussions on multiculturalism focus on the ethical-political principles that may or may not justify this model of citizenship and integration. Since the 1990s, several philosophers, such as Will Kymlicka (1995) and Charles Taylor (1998) in Canada, Bhikhu Parekh (2006) in the United Kingdom or Iris Marion Young (1990) in the United States of America, have proposed theories aimed at demonstrating that principles of justice require the adoption of policies based on the recognition of diversity. These theories have aroused intense controversy, prompting proponents of multiculturalism to specify, refine, and develop their arguments and positions in response to the objections raised against them (Ringelheim, 2011).

Although there have always been sceptics of multiculturalism since the 1960s, who saw it as pandering to immigrants and ethnic minorities in various ways, very significant doubts about the success and value of multicultural policies began to surface in the late 1990s and early 2000s.

Against this backdrop, the concept of interculturalism has been proposed as a framework that emphasizes negotiation, communication, and engagement to address challenges that multiculturalism ignores, particularly the breakdown of integration. According to Kymlicka (2010)

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[6] See for example Vertovec & Wessendor (2010).

and Zapata-Barrero (2017), interculturalism is frequently seen as a solution to the problems of social fragmentation and cultural isolation faced by minority cultures within societies, offering a more supportive and dynamic framework for diversity and fostering greater social cohesion.

The reflection on the relationship between law and diversity has points in common with these analyses. The influence of the prevailing conception of integration and citizenship within a given state, whether assimilationist or multiculturalist, is reflected in the content of the laws and institutional structure. However, the concept of multiculturalism and the debates associated with it constitute a too narrow prism to address the question of the relationship between law and cultural plurality in all its dimensions. Firstly, these analyses, by focusing on the policies implemented by states with regard to ethnic-cultural minorities, offer only a partial view of the issues that the fact of diversity raises in the legal world. They leave aside, for example, the question of the consideration of cultural differences in legal interpretation or the possibility for individuals to use their contractual freedom to organize certain private relationships according to religious precepts. Moreover, they tend to pose the problem in terms of a binary choice: to grant individual rights or collective rights, to recognize or not recognize minorities, to favor universalism or particularism, and so on. In so doing, they do not sufficiently account for the complexity of the legal (and not only!) mechanisms capable of responding to this reality. Lastly, the postulate of the existence of different national models of integration or citizenship presupposes an overall coherence that cannot be found between the different branches of law within the same state: a prevailing discourse in favor of multiculturalism, or on the contrary of assimilationism, does not necessarily determine the approach taken to cultural diversity in all branches of law. These also respond to certain internal rules and logic that depend on their own (Ringelheim, 2011).

1.2.3 Cultural Diversity

> Cultural diversity is above all a fact: there exists a wide range of distinct cultures, even if the contours delimiting a particular culture prove more difficult to establish than might at first sight appear. Moreover, we are becoming increasingly aware of this diversity, an awareness facilitated by the globalization of exchanges and the greater receptiveness of societies to one another (Blake, 2014, p.21).

We can see cultural diversity as a topic of reflection for legal science that is both classic and new. Classic insofar as it takes up themes familiar to law, even if usually studied separately. Freedom of religion is a classic subject in public law[7]. The prohibition of discrimination on the basis of religious beliefs or racial or ethnic origin has undergone considerable development in Europe since 2000, thanks to the influence of European law[8]. Legal anthropologists, for their part, have long been debating the issue of 'legal pluralism', i.e. the existence alongside state law of other non-state regulatory systems, especially of religious or traditional origin, which have a different kind of relationship with the state's legal system (Ringelheim, 2011).

Cultural diversity is, however, at the same time a relatively new object of study for jurists and legal theorists, since it has so far been the subject of little reflection as a specific issue, in all its dimensions and in the various branches of law. In a work published in 2006, Werner Menski thus observes that in the United Kingdom, where the issue of ethnic minorities and the redefinition of the notions of citizenship and national identity have long mobilized the social and political sciences, it is only recently that jurists have begun to take an interest in the problems raised in the world of law by the cultural transformation of British society, in addition to immigration law and the right to non-discrimination.

Of course, law is a multifaceted discipline. The issue of cultural diversity arises differently in constitutional law, criminal law, family law, or public international law. On the other hand, law, as an academic discipline, can be studied according to different methodologies and perspectives. The prevailing approach in Europe is positivist: it consists of analyzing the law as it stands, according to its own principles and methods of reasoning, adopting an 'internal' point of view, that of the actors in legal life. However, when delving into the connections between law and cultural diversity, it invariably leads to questions about the underlying values of the legal system, the correctness of the solutions it formulates, and its interactions with social and political dynamics. This necessitates interdisciplinary approaches, such as the philosophy of law, the sociology of law, and the anthropology of law, which offer valuable perspectives.

Such approaches presuppose adopting an 'external' viewpoint distinct from that of legal

[7] For further readings see Foblets et al.,(ed.) (2010); O'Dair&Lewis (2001)

[8] See Council Directive 2000/43/EC of 29 June 2000 on the implementation of the principle of equal treatment between persons irrespective of racial or ethnic origin and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. Prior to that, the prohibition of discrimination on the basis of religion and racial origin was already enshrined, at the international level, in Article 14 of the European Convention on Human Rights (1950), Protocol No. 12 to the same Convention (2000) and Articles 2 and 26 of the International Covenant on Civil and Political Rights (1966). As for the UN Convention on the Elimination of All Forms of Racial Discrimination, it dates back to 1965. See W. Vandenhole, Non-Discrimination and Equality in View of the UN Human Rights Treaty Bodies, Antwerpen, Intersentia, 2005 and N. Lerner, Group Rights and Discrimination in International Law, Den Haag/London/New York, Martinus Nijhoff, 2nd ed., 2003.

practitioners, providing a certain distance from the conventions and representations they uphold (Ringelheim, 2011).
Such a point of view can be useful to distinguish two 'moments' in which law and plurality meet: the problem of law's understanding of diversity may arise first of all in the making of laws. But even in cases where the law ignores cultural differences, the question of their possible consideration may arise again at the moment of the application of legal norms, in particular by the judge.

In conclusion, we can see how these three main frameworks help us to identify the role of the judiciary when dealing with multicultural challenges and clashes, although they have different normative and analytical foci. As pointed out by Foblets & Vetters (2020):

> […] existing literature which draws upon these frameworks highlights three dimensions of this, with some overlap: first, judges as individual actors navigating difficult questions of transnationalism/cultural diversity/multiculturalism; second, case law and legal techniques/reasoning as tools for addressing transnationalism/cultural diversity/multiculturalism; and third, legal culture as a factor in how transnationalism/cultural diversity/multiculturalism are addressed. (Foblets & Vetters 2020, p.84)

1.3 Thinking Culture

Specialized academic discussions concerning legal proceedings and multicultural societies have taken the notion of “culture” as their focal point. Also in this context, given the focus of the research on cultural diversity management in the courts, it was therefore necessary to briefly elaborate on the possible meaning and use of this term, both in the context of the social sciences and in the legal sphere.
Cultural explanation of social phenomena refers directly to the collective level, and (though not entirely) poses a challenge to methodological individualism. Additionally, they aim to provide a link between internalist explanations, which rely on personal interpretation and judgment, and externalist explanations, which make reference to the social reality. However, if culture does allow us to recognize and explain behavioral differences among groups — whether they are nations, classes, genders, or locales — it is a very elusive and complex concept that is open to all kinds of exploitation (Della Porta, Keating, 2020).

As seen in the previous paragraph, law, meant as a set of legal rules, has assumed an important role as a reply to specific social challenges (Shah, 2020), and issues such as cultural diversity, multiculturalism, and transnationalism are nowadays fairly considered by law and legal systems.
The relationship between law and culture is generally confused in much legal literature. "Though it is widely recognized that links between law and culture are portrayed in many seemingly incompatible ways – law sometimes appearing to be dependent on culture, sometimes dominating and controlling it; sometimes ignoring it, sometimes promoting or protecting it; sometimes expressing it, sometimes being expressed by it" (Cotterrell, 2006, p.102).

In the public sphere of modern democracies, the claims of different groups, motivated by certain aspects of their cultural identity, have become part of the struggles for redistribution and recognition (Benhabib, 2002). It must be considered, however, that when discourses are about cultural differences, they are mainly about immigrants, "nonwestern people". In this sense, *culture* and *cultural differences* are socially constructed categories. This means that what really matters is not how such categories differ from 'us' considering social behavior, but most of all such a perception and its consequences (Van Rossum, 2007).
We can see how:

> Culture has become a ubiquitous synonym for identity, an identity marker and differentiator. Of course, culture has always been the mark of social distinction. What is novel is that groups now forming around such identity markers demand legal recognition and resource allocations from the state and its agencies to preserve and protect their cultural specifities. Identity politics draws the state into culture wars. Accordingly, the very concept of culture has changed (Benhabib 2002, p.1).

And therefore, culture becomes something useful to demand recognition and inclusion, according to specific and defined categories. However, an important premise concerns the classificatory activity put into practice by law. Forms of classification, reflecting the surrounding socio-cultural structure, are ubiquitous in the life of every individual as a means of organizing their reality; the law also makes use of categories, but the consequences of its classificatory activities can be rather risky, as they play a key role in processes of inclusion or exclusion from legality and, as a result, exercise an important function in the criminalization and marginalization of particular groups of people: "law as created by the dominant users can also support inequalities and structures of power" (Decarli, 2018, p.48).

Thus, at least in theory, the democratic state should foster a pluralistic idea of society and therefore be potentially inclined to adequate protection of minorities; however, this is not uniformly guaranteed, as the state is subject to hegemonic, ideological, and stereotypical relations that influence the chances of these groups to gain recognition within the legal system.
Even where intentions seem good, full of terms such as "integration", "protection" or "inclusion", often inappropriate nomothetic categories, accompanied by ambiguous and superficial language, end up consolidating the exclusion of those whom the law was intended rather to protect.
It is indeed upon the use of language that is important to further develop the analysis.
Concerning the very meaning and perception of the term *culture,* it has of course changed over time, and it differs according to the purpose or the domain within which it is used.

> Since Wittgenstein, one could say that all words are 'open'. The meaning of words and in particular their connotation, depends on their everyday use. There is no 'definite' answer to what a certain word means. In this sense maybe only mathematical terms like 'square' and 'circle' are closed. But even these terms are open when used in ordinary life. The fact that most concepts are open is thus a truism. The same holds true for the law. Legal philosophers point out that legal words, the words used in legal clauses and legal acts, have no determinate meaning (Van Rossum, 2007, p.59).

Different methodological and epistemological fields bring inevitably to a different use of some terms, in this case, as seen above, of the terms *culture* and *cultural*, that therefore depend on their use and on the meaning they got in specific domains.
Despite different uses of such terms, a definition of "culture" appropriate for this work must be identified. This is not a simple task because the object in question has been the subject of numerous attempts at interpretation, leading to uncertainty and the awareness of a risk: the assumption used to begin the entire analysis may not be the same.

1.3.1 Cultural Diversity and its Evolving Role in Legal Jurisprudence

Because the interpreter of the law is required to take into account the political connotations given to the aforementioned cultural diversity, awareness of the cultural variety and inhomogeneity only represents the start of reflection. So, diverse paradigms and different public methods develop.
Since the 1990s, in Italy we have witnessed an increase in the number of court cases in which the "cultural" variable has been used for the final decision of the case; obviously, the phenomenon is

global and takes place in "all systems that regulate multicultural societies" (Ruggiu, 2017) leading the judge to confront, case by case, the broad category of "culture".

The language of rights has been widely used to make claims or bargain for recognition by various social groups, often with culture at the center of the debate. It is precisely the frequent use of the concept of culture, as Sorgoni (2011) has pointed out, that has proved disorientating for social scientists, who have long questioned and critically reflected on this concept, categorically rejecting a reified and essentializing use of the term. However, this way of using the concept of 'culture' is unfortunately common, especially in a historical moment characterized by migratory phenomena that have led to an increased use of the cultural variable in a naturalized version, often to achieve even divergent results.

The multiplicity of ethnic groups, languages, and religions is a rather common fact[9], and multicultural societies represent for legal anthropology contexts of great interest to deepen the link between culture and law and between cultures and rights. But when did culture officially enter the courts?

The world of law is greatly challenged by the cultural and religious pluralism of contemporaneity, as the issue of cultural diversity recurs in various areas of jurisprudence, from constitutional law to criminal law or family law. Historically, it was in 1966, with Article 27 of the International Covenant on Civil and Political Rights[10], that culture entered the international legal horizon, obtaining a separate role from religion and language, which had already been recognized, and reaffirmed here, in constitutional texts and international charters. According to Article 27 :

> In States where ethnic, religious, or linguistic minorities exist, individuals belonging to such minorities may not be deprived of the right to have a cultural life of their own, to profess and practice their religion, or to use their language, in common with the other members of their group.

This article even identifies culture as a human right, but only for national minorities, suggesting that this also includes immigrants.[11]

[9] A distinction should be made between the concepts of 'multicultural society' and 'multiculturalism', which are often used indistinctly. The expression 'multicultural society' refers to a situation in which people who recognize themselves in 'different cultures' live together; the concept of multiculturalism, as seen above, refers to the philosophical-political debate on the recognition of differences and, from a legal-political point of view to the choices made at institutional level to address the various issues relating to the coexistence of 'cultures'.

[10] It is a United Nations treaty, born out of the experience of the Universal Declaration of Human Rights.

[11] General Comment No. 23, The Rights of Minorities, of 8 April 1994 clarifies that Article 27 does not only refer to national minorities, but to any subject, even non-citizens, and regardless of the length of time they have been in the State, therefore also to immigrants.

This initial international recognition preceded a phase in which national Constitutions were involved: between 1980 and 1990, fifty of the world's existing Constitutions were amended to include the right to culture or cultural identity of a universal nature, albeit with a rather heterogeneous wording.[12]

In this case, we can identify two macro-groups: the largest group is the one in which culture is recognized as a right of specific minorities, sometimes identified by name, sometimes referred to generically; a second group of Constitutions, on the other hand, affirms a right to culture recognized indiscriminately for all those with a different cultural background but using language that is still very uncertain and undefined.

Another way in which culture is incorporated into constitutions is through the declination of a multicultural principle or cultural diversity; among the protagonists of this process of constitutionalizing culture are states in South America, Africa, Eastern Europe, and Canada, which will be the first Western democracy to constitutionalize a multiculturalist principle in 1982[13] (Ruggiu, 2017). In these cases, culture is recognized as the right of specific minorities: usually, these are identified national minorities, even by name (such as indigenous peoples, Roma, Italian or German minorities), in other cases they may be minorities to whom a generic reference is made (linguistic minorities or all nationalities), but who are nevertheless located within the country in question.

In addition to the chronological fact, which reveals that the oldest Constitutions make no reference to the idea of cultural diversity, the most important issue is that in some cases multiculturalism is part of a sort of self-qualification of the States themselves, in stark contrast to the insertion, in some cases, of clauses consolidating a presumed national identity.

An analysis of the different ways in which constitutions have recognized 'cultural' rights reveals a strong heterogeneity: although there is no lack of examples specifying what the right to culture is, in most cases it is recognized without further details (Ruggiu, 2017).

From the point of view of the domain of law, a dogmatic construction of diversity currently runs on ambiguity and an unresolved situation: on the one hand, culture is understood as a human right, thus incorporated into state systems as endowed with a value, albeit with all the ambiguities of the application of supranational Charters of Rights, such as the 1966 Covenant; on the other hand,

[12] Sometimes these are individual rights, sometimes group rights; sometimes rights are reserved for national minorities or native peoples, sometimes they are universal rights.

[13] Article 27 of the Canadian Constitution states "This Bill of Rights shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians". This is the first Constitution in the world to codify the term 'multiculturalism'.

culture is composed, according to jurists, of practices that can hardly be configured as human and fundamental rights but are better explained with the theory of legal pluralism, as external norms.
The theory of fundamental rights and the theory of the plurality of legal systems are today the two dogmatic constructions within which multicultural conflicts are framed, although their interpenetration is very difficult, creating for judges an antinomian situation: while on the one hand culture is conceived as a right, or at least a principle of constitutional importance, on the other hand it is a harbinger of external norms that are in potential conflict with its obligation to be subject to the law (Ruggiu, 2017).
The heated debate on the attempt to construct effective dogmatics of diversity in the legal sphere is certainly recent, at least in the Italian context, in parallel with a progressively increasing rate of so-called multicultural conflicts, which judges are called upon to resolve.

The Italian Constitution does not include cultural rights, nor has it constitutionalized a multiculturalist principle.

> [...] however, it can be considered that also in Italy the cultural argument has a constitutional basis. This can be deduced from the pluralist principle, from an evolutionary interpretation of Article 9 of the Constitution, as well as from the personalist principle of Article 2 of the Constitution in its reference to social formations, of which the cultural group is part (Ruggiu, 2017, p.218).[14]

Moreover, forms of cultural expression have been codified, specifically linguistic and religious, in the following articles of the Constitution:

- Art. 3, first paragraph: 'All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal or social conditions'[15].
- Art. 6: "The Republic protects linguistic minorities with appropriate regulations"[16].
- Art. 19: "Everyone has the right to freely profess his or her religious faith in any form, individually or in association, to propagate it and to worship in private or in public, provided it is not contrary to morality"[17].

[14] See also Ruggiu (2012), pp. 240-241.
[15] «Tutti i cittadini hanno pari dignità sociale e sono eguali davanti alla legge, senza distinzione di sesso, di razza, di lingua, di religione, di opinioni politiche, di condizioni personali o sociali».
[16] «La Repubblica tutela con apposite norme le minoranze linguistiche».
[17] «Tutti hanno diritto di professare liberamente la propria fede religiosa in qualsiasi forma, individuale o associata, di farne propaganda e di esercitare in privato o in pubblico il culto, purché non si tratti di riti contrari al buon costume».

From 1990 onwards, some trial judges in Italy began using the cultural argument more and more in their decisions. At the court level, cultural identification considerations have also become more and more important. Judges are increasingly faced with the contentious issue of what relevance should be attached to any cultural variables that may have influenced the defendant's behavior (particularly in criminal trials). Despite the fact that, at least in European states, the predominant trend in jurisprudence is to disregard this relevance, the growing number of trials in which the defendant's cultural identity is a point of contention demonstrates that, regardless of the outcome of their case, judges are no longer able to avoid making explicit rulings on the subject of the connection between the defendant's cultural background and the determination of his or her criminal responsibility[18].

The initial uses of culture recognition are diverse and frequently at odds with one another because there is no clear constitutional or legislative foundation for it. But over time, the Court of Cassation appears to have offered some direction to the law of the merits, with several rulings from which it is feasible to deduce an "Italian model" of resolving intercultural disputes. This model, which has a topical nature[19] and is the outcome of a purely jurisprudential reconstruction, has a topical nature, as is the case in practically all legal systems.

According to Ruggiu (2019), the Italian court's rationale might be summed up as follows:

- Cultural impact in a very broad sense: the first requirement is that any cultural influence could be relevant to the judge because the determination of what constitutes culture is done using very broad criteria;
- Customary norm: A customary norm is a practice that is motivated by culture. In contrast to the theory that culture is a fundamental human right, the Cassation interprets multicultural conflicts as manifestations of the phenomenon of inter-legality[20] and legal pluralism. Instead, it views cultural practice as a tradition, a custom, and a source of law. Although placed at the bottom of the pyramid of sources, culture is assigned a value and treated as a balancing entity.

[18] See Ruggiu (2012).

[19] To further explore, see Ruggiu (2019). Overall, the term "topical nature" suggests that the Italian model of resolving intercultural disputes is relevant and responsive to current issues and challenges faced by multicultural societies in Italy. This means that the legal approach is not just theoretical or based on historical perspectives but is actively adapting to the evolving societal norms, values, and legal interpretations of today. The model is designed to address real-world concerns and dynamics related to cultural diversity, emphasizing its practical applicability and responsiveness to contemporary circumstances.

[20] The concept was coined by the sociologist Boaventura de Sousa Santos in the late 1980s. Going further, he reconsiders legal pluralism and identifies inter-legality as the concept where various legal domains overlap, intermingle, and blend into our thoughts and behaviors (De Sousa Santos, 1987).

- Fundamental rights limit: the Cassation admits the relevance of culture, only to the extent that culturally motivated behavior does not undermine values of the system or go against the law.

This situation is closely related to the non-existence of specific rules guiding cultural argumentation, as well as to the manner in which the nature of a conduct is ascertained. It is usually the party's lawyer who raises the cultural exception. The issue is not seen as a technical problem to be addressed by the judge with the support of counsel or other members of that minority. However, even without the assistance of an expert witness, the judge following an established set of findings would sometimes be able himself, or with the testimony of members of the minority in question, to reconstruct whether the argument has an objective basis or is spent strategically (Ruggiu, 2019).

In this fermenting context, born of the debate on multiculturalism, dealing with rights and cultures brings anthropologists (and on the other hand jurists) to confront other disciplines and different languages and intellectual projects, which often hinder a fruitful and constructive dialogue.
An interesting paper (Vetters, Foblets, 2016) presents initial findings from research on socio-cultural diversity and judicial decision-making in Europe. It is a study that is now being conducted in collaboration with the European Network of Councils for the Judiciary (ENCJ) and the European Judicial Training Network (EJTN) at the Max Planck Institute for Social Anthropology in Halle, Germany. The exploratory survey that was carried out in the summer and autumn of 2014 and the group workshop that was performed in January 2015 provided the empirical data.1 105 judges from fourteen different European nations responded to the survey, contributing data. Judges from civil, criminal, and administrative courts participated in the conference; some of them preside over subordinate courts, while others sit on courts of appeal or on the supreme courts of their respective nations (Vetters, Foblets, 2016). As emerges from the testimonies of the judges interviewed, they:

> […] distinguish between at least three dimensions of culture, with the distinctions being directly related to the organization of the judicial decision-making process and thus to the legal and organizational culture within which they operate. The first dimension relates to communication – judges see cultural diversity coming into play when there is a need for direct exchange in the courtroom with claimants/ defendants from a different sociocultural background. In such contexts, communication is identified as a central aspect of culture. The second dimension is related to the difficulties of gathering empirical evidence in situations that require knowledge of the sociocultural context of the parties involved. Culture here becomes context, including a wide variety of elements about which information is required […]. Only the third dimension is directly related to 'culture as norms' (i.e. those norms that

> either a judge or the parties involved considered to be culturally binding). This becomes relevant when judges need to decide legal questions involving foreign law and/or foreign customary or religious norms (Vetters, Foblets 2016, p. 276).

These very concepts of culture, as revealed through the analysis of semi-structured interviews conducted for this research, emerged prominently in the words of the interviewed judges and lawyers, as it is going to be explored in the fourth chapter of this work.
The thesis of the conflict between the universality of fundamental rights and cultural relativism appears to imply an essentialist definition of the concept of culture, which is marked by three main assumptions. The first is that a community or group's set of traditions, beliefs, and values is a closed, homogeneous, cohesive, and coherent system. The second premise is a static reconstruction of these customs, convictions, and values, one that underlines the need to protect cultural identity and pays little to no attention to the dynamic nature of cultural phenomena.
The third premise holds that people's attitudes towards their culture are primarily, if not entirely, passive and that people's cultural identities are developed via the simple act of acquiring the customs, beliefs, and values that guide the community or group in which they live.
Thus, a differentialist viewpoint has the negative effects of highlighting conflicts, perpetuating stereotypes and prejudices, and delaying any process of mutual understanding and engagement between individuals of various cultures.
The emergence of identity preoccupation, which Remotti (2010) has dubbed in recent years, is a good illustration of this effect. In reality, the perception of differences and the need to protect one's own identity have become so ubiquitous over time that people tend to view others and themselves primarily—if not exclusively—in terms of their various cultural identities (and differences).
And not just that. One of the most important factors in comprehending the challenges and conflicts of social coexistence is the increasing diversity of cultures.

1.4 Navigating Multicultural Conflict

As outlined in the previous paragraphs, culture and the cultural arguments have been increasingly involved in judicial reasoning and decisions. Against this backdrop, as partially already emerged, the debate concerning multicultural conflict is extremely topical and in turmoil.
In both the international and Italian contexts, it has been essential to verify both the divergences and the recurring elements in the way judges relate to the concept of culture, to understand whether a

common legal tradition is emerging on this point or simply to compare the different factors that, in the various legal systems, come to the fore in resolving such conflicts (Ruggiu, 2019).
The application of the cultural argument in some of the most important Western legal traditions has been the topic of several studies. The sort of reasoning used by judges when confronted with intercultural disputes in which they, in various ways, attach relevance to the concept of culture is referred to here as a "cultural argument" (Ruggiu, 2019).
A crucial topic to focus on, for what concerns multicultural conflicts, is the so-called cultural defence, an institution that emerged in North American legal theory along with the concept of the culturally motivated offence with the intention of tailoring the way the criminal law is applied by taking into account the accused person's cultural peculiarities.

1.4.1 Cultural Defense and Cultural Offence

Before continuing, it is important to account for a particular element that manifestly arises from the extensive literature on the issue in order to ensure clarity. While North American jurisprudence and doctrine emphasize the cultural component of criminal behavior in relation to the defendant, that is, the person charged with the offence and who develops a trial strategy focused on the relevance of the cultural factor, in other experiences a different perspective is taken, based on reference to the concept of "cultural offence," raising the doubt in the interpreter's mind that these are two separate cases. It is more accurate to argue that cultural offence and defence are "two sides of the same coin" (Van Broeck, 2001, p.30), as this difference is just conceptual and reflects the dual points of view from which the occurrence in question can be examined without altering its essence.
Scholars from both North America and Europe discuss the same phenomenon, acknowledging that the criminal behaviour under discussion is an expression of cultural conflict because it consists of culturally motivated behavior, carried out by a member of a minority group, which represents an obligation or conduct that is tolerated within the community to which it belongs, while it also incorporates the elements of an offence for the purposes of the law.
Therefore, in common law countries, most notably in the United States of America, the subject is investigated from a different angle, that of the offender (defendant) and his or her defence strategy, which uses references to a specific cultural heritage. European scholars emphasize the aspect of the offence, focusing on the manner in which the criminal act is carried out and on the victim of the culturally oriented offence (Van Broeck, 2001).

Cultural crimes and cultural defence began to be talked about in the mid-1980s in the United States when, in the face of serious and particularly heinous crimes (murder of children by drowning, kidnapping and sexual assault, as examples)[21], the defendants, migrants from a country/community other than the one in which the crime was committed, as well as their victims, successfully invoked a 'cultural excuse' not provided for by the legal system: they are in fact convicted of a minor offence or are granted a considerable sentence reduction, in some cases even a derisory one. The two categories of cultural defense and cultural offence, developed by the doctrine, which has considered them peculiar from the beginning, have now entered North American and European legal cultures to indicate (cultural offences) crimes committed under the pressure of cultural norms – sometimes also expressed in legal norms in the country/group of origin – in contrast to the criminal norms of the place of destination; the other (cultural defence), a cause of exemption or diminution of penal responsibility sought in the presence of alleged cultural offences (Scudieri, 2018).

In general, there is a sensitive difference between the 'continental' literature and that of the common law countries as regards the approach to the 'cultural argument' in the legal sphere. While European literature tends to focus on the act itself, i.e. the cultural offence, or culturally oriented crimes, American literature mainly deals with the problem from the point of view of the defence of the accused, i.e. the cultural defence.

The concept of *cultural offence* is defined by Van Broeck (2001) as:

> an act by a member of a minority culture, which is considered an offence by the legal system of the dominant culture. That same act is nevertheless, within the cultural group of the offender, condoned, accepted as normal behaviour and approved or even endorsed and promoted in the given situation (Van Broeck, 2001, p.2).

A dominant culture is in this case the culture that provides the ideological basis for the penal system on which the process in question is based, and the minority is therefore denoted by a cultural background that does not share the same cultural norms and values as the dominant group.

Although this definition is the most widely used by those working on the subject, there are obviously many variations. There are those who decide to exclude indigenous minorities, who are considered somehow 'privileged' compared to non-national minorities, or those who choose to limit the notion of 'culture' to which they refer to the concept of 'people or nation', thus qualifying it in an exclusively ethnic sense.[22]

[21] For a precise description of such cases, see Ruggiu (2019).
[22] See for example Basile (2007)

In order to be able to speak of a cultural offence, a 'minority ethnic group' is, therefore, necessary, in most cases identified simply by geographical origin, built around the concept of people/nation; but if in the anthropological field this could trigger a heated discussion and reappraisal of the issue, in the legal field the question is not examined in depth, except in a few rare exceptions.
However, what remains fundamental to the definition of a culturally motivated offence is whether the offence is caused by adherence to a different legal or moral norm, when there is thus a 'clash' with another legal culture (Van Broeck, 2001).
The fact that the offence may be 'caused' by a given cultural background obviously does not imply that culture is the direct cause, nor that this motivation is conscious. Rather, it means that a direct connection can be identified with a morally shared norm within the minority group in question. The proposed guidelines for *cultural offence* cases essentially boil down to a situational approach, thus preferring a case-by-case study in order to take into account all the various nuances of the specific case in question.
Van Broeck then proposes two definitions of *cultural defence*, which are useful to better explain the different nuances of this concept:

> A cultural defence maintains that persons socialised in a minority or foreign culture, who regularly conduct themselves in accordance with their own culture's norms, should not be held fully accountable for conduct that violates official law, if that conduct conforms to the prescriptions of their own culture.
> [...]
> The cultural defence is then referred to as a specific doctrine that recognises the cultural background of the defendant as an excuse or mitigating circumstance in a criminal case (Van Broeck, 2001, p.28).

While the second definition implies explicit recognition in the context of pretexts used in the legal sphere, whereby cultural factors can be used as exculpatory or mitigating circumstances, the first definition aims to encompass all cases where cultural elements are put forward in the course of criminal proceedings.
Just as a specific connection between the act committed and the cultural background is required for the cultural *offence, the* same can be said for the opposite situation of the *cultural defence*: in order to use the cultural variable in the defence, cultural elements become relevant if an offence can be qualified as a 'cultural offence'.

How then can the concepts of cultural defence and cultural offence be useful for our discourse? It becomes clear that the institution of the cultural defence/offence is notable for allowing the cultural factor to enter the operational space of law, where it has in fact been incorporated into the

general categories provided for by the host system, primarily relating to guilt, the subjective component of the offence, and the indices of commensuration of the penalty in the final phase of sentencing, despite the fact that it has not been formalized as such.
In fact, the debate on cultural *offence* and *cultural defence is* heated at the global level and thus concerns the importance of taking cultural differences into account in litigation, both as a human right, as set out in Article 27 of the International Covenant on Civil and Political Rights, and to the extent that enculturation shapes the perception of individuals and influences their actions.
Taking into account a person's background is not fundamentally different from taking into account other social attributes, such as gender, age, and mental state; however, it is crucial not to fall into the error of cultural essentialization.

Cultural exemptions are evident in European contexts, but their manifestations are shaped by a multifaceted interplay of social, legal, and historical factors. It's important to note a distinct feature of European legal systems, which typically differ from the United States. While the United States relies heavily on case law precedent, European legal systems are primarily grounded in penal codes. These codes reflect and uphold fundamental values and guiding principles in accordance with the unique socio-cultural traditions of each European country, with the notable exception of the United Kingdom.
In Italy, criminal doctrine, for about a decade now, has begun to thematize the problems posed by such conflict situations as well, using the concept of culturally motivated crime.
Such themes are not going to be deepened here. However, the management of multicultural conflicts, whether through cultural defence or cultural offence (culturally motivated crimes) is something crucial to be taken into consideration when dealing with cultural diversity and the law, though referring to the criminal law. The reference to the cultural argument is here at stake, and this work aims to fit into this strand of studies, albeit dealing with the issue in a significantly different manner, thus analysing the point of view of lawyers and judges, especially in the civil sphere of family law.

1.5 The Debate in the Civil Sphere

Within the realm of civil matters, the issue of determining the extent of protection to be granted to potential norms and values originating from a distinct legal culture, and consequently, the level of adjustment of our legal system to a multicultural society, initially emerged in relation to religious

distinctions. Specifically, in the United States and Canada, there was an initial emphasis on adapting legal norms to align with the standards imposed by the religious beliefs of workers. In response, the mechanism of reasonable accommodation, manifested in various forms, was introduced as a remedy for this purpose. Emerging in the civil rights courts of America during the 1970s, the concept of reasonable accommodation mandated that public or private employers undertake 'reasonable accommodations' to safeguard the religious beliefs and practices of their employees, unless such accommodations posed an undue burden on the employer (Mondino, 2017). Drawing inspiration from the Canadian and US context, the term was adopted in Europe through Council Directive 2000/78/EC in November 2000. Although this directive doesn't specifically tackle cultural or religious differences, it focuses on combating social discrimination and striving to advance substantive equality under the law.

In the ongoing socio-legal discourse in Europe, the term "accommodation" pertains to practices wherein the law or societal entities, operating somewhat discreetly, demonstrate sensitivity, consideration, and a willingness to accommodate values and meanings that diverge from their own (Ballard, Ferrari, Grillo, Hoekema, Maussen, Shah, 2009).

1.5.1 Multiculturalism in Family Law and Juvenile Law: A Complex Interplay of Rights, Norms, and Autonomy

The contemporary landscape of culturally, religiously, and legally diverse societies introduces intricate and multifaceted challenges into the realm of judicial intervention, particularly within the family sphere. These challenges stem from the array of family values, norms, and diverse perspectives on familial relationships, childhood, adulthood, child rights and responsibilities, autonomy, and vulnerability. These aspects are deeply rooted in various cultural contexts and traditions.

Several European states have started taking action to stop certain types of (claimed) discriminatory practises that are supposedly carried out by minority groups. In England, there are ongoing plans to make forced marriages illegal. In Norway, legislation has been introduced to address forced weddings and marriages involving minors. These laws are specifically for criminal law. Similar, but more widely applicable, policies are being considered by Sweden. The Swedish proposal states that if a marriage is forced or involves a person under the age of 18, it should also be illegal.

This includes religious and other informal marriages (Jänterä-Jareborg, 2014).

It is argued that the politics of difference, which acknowledge each person or group's distinct identity at the legal level, conflict with the so-called politics of universalism, which emphasise the significance of applying the same laws to everyone. We are reminded by Werner Menski (2011) that people do not give up their lives just because they move in with us. The legal system must take this social reality into consideration and grow more aware of the necessity to account for these variations. Though people arrange their lives to be flexible and open enough to take advantage of alternative choices, which they can justify in terms of their cultural or religious beliefs and meaning, terms like "identity" are misleadingly invoked to suggest something that is clearly defined, stable, and fixed (Jänterä-Jareborg, 2014).

As noticed by Stark (2005) family dynamics are undergoing significant transformations, fueled by globalization, changing mobility patterns, and shifts in societal norms:

> families are the primary unit of social organization, and families are changing, trying to adapt to new demands and taking advantage of new mobility. Globalization is transforming family law. Women are seeking asylum as refugees, fleeing domestic violence. Workers are following jobs, leaving their families behind and sometimes starting new families in their new countries. Child abduction has become an increasing threat as parents of different nationalities divorce, and both want their children to be raised in their own national traditions (Stark, 2005, p.1).

In family law adjudication, the judge has varied degrees of discretion to evaluate, interpret, and concretize terminology and concepts that are typically stated in imprecise, ambiguous terms, such as "best interests of the child" or "hardship." Legal organizations linked to certain content are also being contested and reexamined: should the only definition of a "marriage" be the joining of two individuals of different sexes? Can same-sex unions be included in it? Does marriage require the Christian concept of monogamy, or may it involve more than two people? Does the notion still include ideas about the duties that spouses should play? (Yassari, Foblets, 2022)

The changes in society and legal structure have fostered and permitted, on the one hand, the spread of nontraditional family structures and nonconjugal ways of life for couples, and, on the other hand, an enhanced mobility of people moving from one family structure to another.

It is difficult to argue with the actual realities of the declining marriage rate and the growth of multiple families, which are felt to varying degrees in all industrialized nations, including Italy (Pocar, Ronfani, 2007).

Family law thus immediately emerges as a privileged context of analysis in order to assess cultural influence in the field of law. First of all, starting from the consideration that the recognition and acceptance of cultural and legal differences are among the principles of our private legal system.

They are in fact governed by Law 218 of 31 May 1995, which regulates the Italian system of private international law by determining the scope of Italian jurisdiction and the criteria for identifying the applicable law. This application, however, obviously finds an insurmountable limit in the case in which the effects are contrary to constitutional principles and international private public order, a case in which the judge must apply Italian law (Art. 16 Law no. 218/1995) (Confente, 2012).
Given such considerations, it becomes evident why family and juvenile law serve as the focal point for cultural influence analysis. However, it's important to clarify what is meant by 'family', understanding that this brief definition omits critical nuances addressed in subsequent chapters of this work.

We can first identify a family model based on status, in which even the realm of intimacy and affection is delicate and structured by the same legal identities. It is a model in which specific and pre-established duties and rights on the basis of gender and age, hierarchies, and pre-established power relations, are established (Pocar, Ronfani, 2007; Ronfani, 2020). Thus, the key component of the family model is status, which is translated into the institution, which is marked by continuity across time, the superordination of its tasks, and its very purpose in relation to the people who make it up (Pocar, Ronfani, 2007). However, this status-based model appears largely outdated. Indeed, the conceptualization of family has undergone some profound transformations.

By coming to an agreement on a set of principles that should guide family and social practices, it is feasible to pinpoint the ideal kind of modern family in terms of how intimate affective relationships are arranged. These values could be seen, on the one hand, in the centrality given to the child, which would show up in the significance of children in the affective life of families, in the recognition of the child's interest in growing up in his or her own family, in the responsibility of the public sphere in the care of young children, and on the other hand, in the symmetry that would characterize family roles. The ideas that underlie the trends in the legal regulation of family relations and have been driving its modifications can be found in the ideals that would, at least on a symbolic level, characterize the modern European family. Together, these ideals form the "relational family," which would be the idealized representation of contemporary families, connoted by the characteristics of the so-called post-modern family. The contemporary family has preserved and emphasized the distinctive characteristics of the relational model, presenting itself as a social setting characterized by the mobilization of each person's resources, where decisions cannot be made hierarchically and where each member must be provided with the conditions necessary to create their own social and

personal identities. In order to do this, the family unit must come to an understanding of two principles: respect for individuals and their autonomy and shared living (Pocar, Ronfani, 2007).
If we consider the kinds of complicated interactions that can emerge in these aggregates as a major component of its description, the mobility of family boundaries becomes apparent. As a result of the possibility of overlap between various parenting styles, parental interactions between adults and children may be developed that are not uniform with those established on the basis of formally established roles. Therefore, a large network of social kinfolk may develop, symbolizing the diversity of modern family systems. As already mentioned, current family laws, like social laws, prioritize the interests of children over those of parents. They do not place the rights and interests of members of the family on an equal footing. It is suggested that the child's interest, which is considered to be "superior" and "preminent" in the situations in which it is mentioned, be regarded as a cardinal principle and recommended as a guiding criterion for the practitioner and translator in judicial and social welfare practices. More broadly, all Western nations recognize that safeguarding children's interests should be a top priority when implementing social policies that affect families (UNCRC, 1989; Pocar, Ronfani 2007; Ronfani, 2020).

Thus, it is clear how much importance is placed on assessments around the best interests of the child and the meaning to be assigned to this principle in the quest to reconcile the interests of different family members. A delegation from the legal to the judicial has been established with reference to this principle's centrality. Family law also contains other broad principles, or general clauses as they are commonly known, such as the equality between spouses principle, family unity, equitable treatment of children, parental responsibility, etc. These principles, including the child's best interests specifically, have the peculiarity of appearing to the court or interpreter as "empty boxes", whose breadth and meaning will need to be periodically evaluated in light of the specific scenario to which they are referring. As a result, these clauses serve as both conduits for ideals that norms cannot directly endorse and tools for easing the tension between "ageing" norms and a constantly evolving reality. These clauses need special consideration because they are ideologically marked, have concepts that are so ambiguous as to potentially lend themselves to contradictory interpretations, and provide interesting food for thought. Let's start with the idea of family itself. On the side of judges, it is easy to see the effect of other fields of study, such as psychology and the social sciences, which have developed various and varied representations of childhood, children, and their basic needs, in the interpretation of the child's interests.

The complicated issues of communication between legal culture and other cultures, as well as between the judge's expertise and that of the experts, thus, converge in the actual assessment of what is in the child's best interest (Pocar, Ronfani, 2007; Ronfani, 2020).
Therefore, in the context of today's relationship between the public and private spheres, which is characterized by a significant acceptance of individuals' choices and autonomy in family relations and by the renunciation of the establishment of precise rights and duties between spouses in the face of the disappearance of a single-family model, the interest of the child can be precisely interpreted as the fundamental moment of the legal regulation of family relations.
It could facilitate convergence between the proponents of quite different concepts of family relations in the current setting of the diversity of family models. In other words, it would permit lawmakers and other political, social, and cultural forces to avoid clearly stating their preference for one family form over another. Accepting the best interests of the child as a cornerstone family law principle and a guiding factor in the judge's decision allows a plurality of values, cultures, and attitudes present at the same time in a social organization to be given a voice in the context of law understood as an instrument of coexistence between different values and models, and not as the imposition of one model with the delegitimization of all the others; as an elastic means, and not a rigid one (Pocar, Ronfani, 2007).

The presence in Italy of numerous immigrant families confronts different legal traditions. Indeed, the interest of the child coming from different cultural and religious traditions must be considered in its entirety, taking into account multiple needs and circumstances.
It must be considered, on the one hand, the need, to preserve cultural roots while, on the other hand, taking into account the needs that emerge from the constant conflict that the child has with the society in which he or she lives and with the values embedded in it; the requirements of supranational law that are more and more inclined to take into account the various and even more articulated family models; however, the various perceptions of the child's "well-being" in the various cultures.
As a result, it is more challenging to define the nature and scope of the child's best interests in a multicultural context. This is true not only because it must be prioritized over the interests of the public and, when necessary, other family members, but also and especially because of the complexity of the actual needs of minors who come from different cultural backgrounds with which they may not get along (Garaci, 2021).

Families, as normative contexts, impart values and norms to younger generations, making it essential to grant individuals as much autonomy as possible within the private family sphere.

Nevertheless, families often impose norms on their members, especially minors, limiting their free choices (Mancini, 2020). Recognizing this, legal practitioners must acknowledge the plurality of normative influences that individuals encounter and their impact on fundamental rights. When dealing with vulnerable individuals, particularly in family and minor-related proceedings, it becomes crucial to interpret and adapt legal rules while considering the effects of incorporating external normative references into judicial interventions (Mancini, 2020; Lovati, 2020). To do so, it is essential that all professionals involved in such proceedings, including judges and lawyers, have interdisciplinary training that includes extra-legal disciplines.

> In fact, one cannot deal with family, childhood, and adolescent relationships without carrying out in-depth and multidisciplinary research into the social context and the issues concerning the life of an individual: culture, education, parental responsibility, development, autonomy, ability, protection. Furthermore, we must not overlook the fact that, in this context, there are many difficulties in reading phenomena that may arise from cultural, religious, and ethical diversity with respect to foreign citizens, which shows the importance of interdisciplinary training also in anthropological terms (Lovati, 2020, p.228)

1.5.2 Ordinary and Juvenile Judge: Two Different Approaches

A spouse or parent, with the assistance of a lawyer, requested the judge's intervention before the ordinary court in the absence of a settlement between the parties by filing an appeal (Article 706 of the Code of Civil Procedure, Article 4, Law No. 898/1970) containing specific questions, on which the other spouse or parent took a formal position by entering the case with the assistance of a lawyer, establishing the "track" of the dispute. The need to examine the children's psychophysical well-being and the potential developmental risk only made it necessary to activate all of the juvenile judge's office's investigative and decision-making powers after reading the documents and meeting with the parties when profiles of serious parental incapacity of one or both parents emerged, having an impact on the children. Therefore, regardless of the parties' requests, even a regular judge can urge the activation of support and assistance interventions by requesting the involvement of social services and specialized health services capable of determining the family's core, the psychophysical state of one or both parents, and the condition of the minors (Ortolan, 2021).
The juvenile court judge follows a chamber process: the judge rapporteur – *togato* – reports to the panel, which consists of two *togato* members and two expert members (one male and one female),

and which makes all decisions regarding the case with the exception of the most basic preliminary inquiries (such as assigning investigators and scheduling hearings). Most often, the juvenile court prosecutor initiates the proceedings after delegating the investigation and attempting to gain parental cooperation in the suggested interventions. As the public body defending the fundamental rights of minors, the prosecutor activates the juvenile court with a petition containing requests for investigations and protective measures in accordance with Articles 330 and 333 of the Civil Code (Ortolan, 2021).

When it comes to understanding the specific situation, the issues at hand, and the quality of family relationships, the perspectives of the psychologist, educator, psychiatrist, and tutorship practitioner (to name a few of the most frequently represented professions in the honorary component) are of utmost importance. Through their eyes, we can see the transformative potential of the individual family members in that peculiar perspective of the judge 'for' minors, of being a decision.

In fact, the reform of family law (Law No. 151 of 1975) and the initial reform of the law on adoption and family fostering (Law No. 184 of 1983) significantly propelled a particular type of judge to interact with local services established by attentive Regions and Municipalities. These services are not merely supportive of the judiciary; they possess their own institutional competencies in child protection as defined by regional laws. While required to adhere to judicial rulings, they aim for positive collaboration, striving to implement agreed intervention projects where feasible.

This establishes a dual system for safeguarding children's rights: one aspect focused on social welfare and assistance, and the other judicial, both mandated to coordinate when necessary. However, due to the diverse regional social and political contexts, this system did not develop uniformly, leading to vastly differing local practices that subsequently caused significant issues (Fadiga, 2016).

Despite it is not going to be in-depth analyzed, it has to be considered, though, that on September 9, 2021, the Senate Judiciary Committee approved a revised proposal regarding bill AS no. 1662, incorporating delegation principles for the establishment of the "Court for Persons, Minors, and Families" into a comprehensive amendment. The new court is expected to replace the current juvenile court, expanding its jurisdiction to cover both civil and criminal matters, and absorbing civil jurisdiction from ordinary courts on matters concerning individuals' status and family issues. The court will be structured with a district section at each Court of Appeal location and local sections at each ordinary court location within the district (Montaruli, 2021; Spada, Cartasegna, Costella, 2022).

1.6 Cultural Expertise: Collaborative Engagement?

This investigation is centered around the intersection of cultural factors and legal arguments, which constitutes its focal point. The use of cultural expertise within the legal domain prompts crucial inquiries: is it employed within the legal arena? Why is it put to use? And what impact does it have on the judicial system and the courts?
This comprehensive exploration uncovers the historical significance of cultural expertise in the context of applied anthropology, shedding light on its intricate interplay with conflict resolution, legislative procedures, and governance, thereby addressing questions about its role, purpose, and effects within the judicial system.

Cultural expertise employed in the form of expert advice and testimony has been a major activity in applied anthropology. Indeed, the use of anthropological knowledge for conflict resolution, legislative and *governance* processes, for better or worse, has been quite frequent throughout the history of anthropology. Although it has not been widely acknowledged, the use of anthropological knowledge within the courts and for other legal matters has influenced the history of anthropology[23]. From the 1960s, and even more so from the 1970s onwards, trends developed to denounce, both within and outside the discipline of anthropology, the conceptual and theoretical models that had justified colonial powers and racism[24]. Equally important was the criticism directed at those anthropologists who were perceived as collaborators in the field of applied research, criticized precisely for providing the theories that justified colonialism and, when they were in the field, for not being actively engaged against colonial powers.
Applied anthropology was attacked in particular because of suspicions of unethical alliances regarding underlying financial gains. As a result, the entire discipline, according to Livia Holden (2019), has long suffered from a lack of credibility, suspected of engaging in questionable relationships with the powerful, making disrespectful use of the intellectual honesty one would have expected to find instead. It is important to take these premises into account with regard to applied anthropology because of the strong repercussions they can still have today: approaching such

[23] For example, for the claims of indigenous groups in North America as well as in Australia, or for governing overseas territories during the colonial period. As early as the late 19th century, both the British colonial administration and the United States government consolidated the practice of funding applied research, involving anthropology in legislative processes and colonial governments.
[24] This was the case both with regard to British anthropology - for which see for example Kuper (2014) - and with regard to the French school, for which there was rather a critical thinking directed at the quality of anthropological knowledge rather than its political position.

branches of the discipline cannot be done without adopting the same self-critical point of view that so many anthropologists have taken throughout the history of the discipline.

The expert, understood as the person who plays a mediating role in a variety of ways, does not per se belong to the formal framework of the law, but is nevertheless bound to it and serves as an intermediary between the 'cultural' world and the world of law, himself becoming the symbol of the frequent disagreements and misunderstandings between these two spheres.
Livia Holden (2011) proposes the following definition of *cultural expertise:*

> Cultural expertise is the special knowledge that enables socio-legal scholars, anthropologists, or, more generally speaking, cultural mediators, the so-called "cultural brokers", 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). [...] cultural expertise differs epistemologically from the typical cultural defence. It not only preceedes cultural defence, necessarily, but it also exceeds cultural defence, by which I mean it preceedes it temporally within the proceedings and exceeds it in scope because it can be requested for a wider range of cases than those of criminal law (Holden, 2011, p. 2).

As with any other expert called to testify in court, the objective of *cultural expertise* is therefore to apply specific and specialized knowledge to a given set of circumstances proposed to the expert, whose considerations must be worked out independently of the legal outcome of the case in question.

As Livia Holden (2019) argues, studies regarding anthropological expertise have identified four main concerns. Firstly, the neutrality aspect of *cultural expertise,* which is precisely its crux: within the courts, social scientists have often been accused either of not being ideologically disinterested or of simply being instructed by lawyers, ready to affirm whatever is asked of them. Other issues that emerged were the lack of predictability in the way expert testimony is used or evaluated by the courts; the potential epistemological clash regarding the interpretation of ethnographic data by anthropologists and lawyers; and, finally, an expectation of a growing tension between the ever-increasing regulation of mass migration and the scarcity of cases adjudicated also thanks to the contribution of expert testimony.
It is evident that in both *common law* and *civil law* countries, legal proceedings do not exhaust the field in which socio-anthropological studies contribute to conflict resolution. Livia Holden (2019) in fact proposes to broaden the concept of cultural expertise, adding to the definition previously given a further relevant aspect, namely the need to take into account a wider range of extra-judicial

procedures in which knowledge from the social sciences is applied to the resolution of conflicts or the formulation of rights, also going beyond the courtroom.
Anthropologists are indeed involved in civil and criminal law cases, but also in a wide variety of contexts where culture is on the bar, which may include:

- Providing expert advice on welcoming "others" and their cultural practices
- Responding to government consultations on proposed minority legislation
- Immigration and asylum cases
- Family law matters, i.e., marriage, divorce, child custody and inheritance
- Commercial matters
- Criminal law cases, often involving domestic violence and abuse.

One of the main areas in which anthropology has been involved relates to immigration and asylum claims and appeals. There is now a vast literature on this, reflecting the experience of hundreds of cases. The commitment of anthropology is to provide specific knowledge about the countries from which these people come, cultural and social translation, and interpretation to assist the courts in understanding what has happened to asylum seekers (Grillo, 2009; Holden, 2019).
Procedures and policies are quite similar in Europe, although there are some differences: in the UK, for example, unlike in Italy, the cultural expert may appear in person in court and may be cross-examined[25]; in the US, when a cultural expert is hired to assess the risks a person would face if forced to return home, *cultural expertise is* often limited to report writing, rather than an in-person presence in court.
The word of the expert therefore assumes a fundamental role: external advice, be it from doctors, anthropologists, or experts in certain geographical areas, must necessarily produce a written report in order to provide "objective" evidence to support and strengthen the asylum claim made. As also emerges from a work by Anthony Good (2004), 'credibility' is at the heart of the debate on the various dynamics of judging asylum applications; by accepting or rejecting certain expert reports, judges de facto legitimize or not the entire cognitive status of the disciplines, judged more or less credible and consequently creating a real hierarchical relationship between them.

[25] In Italy, the role of the expert in asylum application cases can be defined by two main functions. The anthropologist and the applicant carry out the preliminary phases of life story collection. On the one hand, this operation allows the applicant to understand the system in which he/she is placed; on the other hand, it helps to produce a narrative in a form suitable for the Italian legal system. The second function that can be attributed to the expert is to use his or her knowledge and experience of the asylum seeker's country of origin, in collaboration with the lawyer, in order to prepare cases for appeal.

1.6.1 The Evolving Role of Cultural Experts in the Italian Judicial System: Challenges and Opportunities

In Italy, contrary to what we have seen so far with regard to other judicial realities, the collaboration between law and cultural experts is still rather fragile and uncertain, despite the fact that in recent years there have been important changes at a social level, which would require a greater presence of this figure in the courts.

In many cases, in fact, judicial actors are not aware of the cultural complexities of certain groups involved in trials and have no experience with the populations to which the parties in question belong. Italian law therefore allows socio-legal experts to take part in trials: in cases where the issue cannot be resolved solely on the basis of general knowledge or experience, the court, the public prosecutor and the parties to the case are authorized to seek the advice of professional experts.

The role of experts in the Italian judicial system is regulated by Articles 61-64 and 191-201 of the Code of Civil Procedure and Articles 225-233, 359, 360, 501, and 502 of the Code of Criminal Procedure and are referred to using different terminology depending on the type of jurisdiction.

In fact, we have the court-appointed expert witness (CTU), who assists the court in civil matters, the expert witness, who assists the court in criminal matters, the technical consultant (CT), who assists the plaintiff, while the party technical consultant (CTP) assists the parties in both civil and criminal cases. With regard to specific courts, the names of experts deemed professionally and technically qualified in specific matters and possessing respectable moral conduct are listed (Ciccozzi & DeCarli, 2019). However, the choice of advisers is not limited to the options in the registers; court actors may call in experts who are not registered with the court, as long as this decision is adequately justified.

We can therefore distinguish between professional/nonprofessional and public/private expertise.

It is possible to talk about professional cultural expertise only when it is performed by a qualified professional, namely an anthropologist, historian, ehtnopsychologist, or academic; they must be recognized as experts on the cultural issue emerging in a trial and not be necessarily part of the cultural group. Nonprofessional expertise, instead, is that performed by a lay person or by an institution of a specific cultural group. In this way, the nonprofessional cultural expert is able to explain the meaning of cultural issues at stake due to the belonging of the same community.

Concerning public and private cultural expertise, in the first case, it is requested by the judge, with the use of public money, while in the other case the intervention of a cultural expert in the proceeding is sought by the lawyer, and the costs covered by the defendant (Ruggiu, 2019).

Unfortunately, as mentioned above, the figure of a cultural expert is not well-known yet, nor there is awareness of how an expert might really contribute to certain legal cases.
As it is going to be deeper analyzed, in the chapter concerning the results of the fieldwork held in Milan, judges apparently rely on social services, who are responsible to address properly the issues at stake. However, among lawyers, it is much more common to rely on a CTP, when possible.
In this sense, among the professionals possibly involved mainly by lawyers, when they may not be aware of some specific cultural tradition and in order to adequately assess each situation, we can find the cultural mediator, since the presence is often not sufficient to bridge and understand differences and possible problematics (Lovati, 2020).
It would therefore be reasonable to rely on the cultural expert, and some legal scholars consider the expert's assessment crucial in some proceedings. However, many are still skeptical about this possibility, as they see the risk of the cultural expert's assessment becoming rather a criminological expertise, which is not allowed under Italian law.[26]
The role of the cultural expert is thus limited to providing explanatory testimony regarding specific phenomena or the socio-cultural and historical background of the party in question.
Moreover, in order to provide an assessment that can be considered comprehensive and coherent, much depends on the accuracy of the questions formulated by the court and to which the expert must then give an answer.
However, the fear of being misunderstood or that the information provided may be manipulated, without taking ethical issues into account, leads experts to constantly question their role in public institutions. While theoretically the consultants seem to believe in the importance of applied anthropology in this field, not everyone actually agrees to take part in the processes.
In addition to the previously mentioned considerations regarding the relationship between cultural anthropology and legal thinking, where the collaboration between the two disciplines is not always straightforward, as far as the Italian situation is concerned, the number of cultural experts involved in judicial proceedings has so far been very low.
It is also possible that judicial actors do not choose to consult cultural experts because of issues that concern Italian society in a broader sense.

[26] Since it could be seen as an opinion about who the criminal is, and not about the act committed, the Italian penal system excludes any kind of assessment that aims to reveal and explain the personality of the accused person, rejecting any kind of report that focuses on the biological origins or criminal behaviour of the person in question. Rather, what is required is an assessment that focuses specifically on the specific event and that brings out the causal link underlying the possible cultural offence.

In our country, for example, anthropological knowledge is still relegated to the academic world, where it nevertheless enjoys a rather low status, as well as in the public cultural domain, where there is also little visibility.

As Decarli states:

> Distinguished scholars from other disciplines often underestimate anthropology, and ordinary people simply do not know what this field involves. The fact that it is largely overlooked by the Italian judiciary system might not be surprising, therefore, and it is understandable that anthropologists might fear seeing their ethnographies misunderstood or exploited (Decarli, 2019, p 37).

In conclusion, we have seen the important role that the cultural expert can play within (and beyond) judicial proceedings, although it is an area that proves to be rather delicate due to its ethical issues.

More effort is needed to understand not only the potential of anthropological experience within the formal legal framework, but also to realize the danger of a possible manipulation, more or less direct, of anthropology and more generally of the social sciences within the framework of law and the various decision-making processes, as it is going to be deepened in the second part of this thesis.

1.7 Research Questions

As seen so far, dealing with law and culture and legal and judicial practice involves different theoretical frameworks, different kinds of knowledge, and different analytical levels that inevitably intersect.

The broad thematic framework presented so far contributes to a kind of context of analysis within which and for which to identify the research questions that have guided this work.

On the basis of these introductory thematic considerations, which precede, motivate, and accompany my research, this work aims to look at the evaluation, perception and management of the cultural element by lawyers and judges. The objective of the project will be to investigate how the cultural element is dealt with within the Italian legal context, in the frame of family and juvenile courts in Milano, (Sacchi, 2013; Pannia, 2015; Ruggiu, 2017), keeping into consideration that in some cases cultural roots could be strategically employed to justify certain forms of behavior (Volpp, 2000), while in others they could be simply ignored, even when they are actually relevant. Besides analyzing the relationship between sociocultural diversity and judicial decision-making in contemporary society (Vetters & Foblets, 2016) - where multicultural conflicts are more and more

frequent - it is necessary to investigate how lawyers and judges react to the involvement of culture in litigation.

Therefore, the aim is to understand how lawyers and judges perceive, assess, and manage sociocultural diversity in their daily decision-making. How is culture used by lawyers and judges? Which definitions of culture emerge? Do they consider the cultural background as relevant in certain legal cases? Do they contact an expert, and on what grounds? Which kinds of knowledge are considered cultural expertise? What are the necessary tools for lawyers and judges to better comprehend and evaluate the cultural element in the broader legal context?

The research questions now set out imply a further specification of the point of view in terms of the choice of theoretical approaches. Looking at the perception of the individual judge and/or lawyer, within a defined 'micro' context, calls into question the level of everyday practices and their organization among the various legal figures. It is, therefore, a matter of looking at the context not only from a micro perspective, but also from a fundamentally organizational point of view, referring to the court as an institution.

The analytical and interpretative itinerary developed from the corpus of ethnographic data is here divided into two empirical chapters (fourth and fifth), respectively dedicated to the Court of Milan, and to the presentation of the judgments examined.

The decision to conduct an exploratory research on the topic of cultural diversity in Italian courts, with a particular focus on family and juvenile law, was motivated by the limited availability of specific literature on this subject. In contrast to the criminal domain, which has seen more investigations and a richer debate, and with migration law receiving attention, the civil domain remains relatively unexplored.

Within the context of family and juvenile law, the complexities of issues related to cultural diversity require an in-depth analysis that currently lacks extensive support in existing research. Intercultural dynamics can have a significant impact on legal decisions and procedural practices within courts, yet detailed information on this phenomenon is scarce.

Given this gap, an exploratory investigation appeared as the most appropriate option to examine this area. The exploratory approach allows for the discovery of new aspects, capturing nuances, and generating hypotheses in an under-researched context. Furthermore, the absence of predetermined hypotheses enables the adoption of an open and flexible perspective, ideal for addressing a complex and evolving topic like cultural diversity in Italian courts within the realm of family and juvenile law.

1.8 Conclusions

In this introductory chapter, the aim was to introduce the main arguments useful for the subsequent analysis of the theoretical framework and for the analysis of the qualitative data collected, presented in the following part of this work.
Within the political and judicial spheres, culture and cultural claims have emerged as a crucial issue and since the structures within which justice operates are changing, as well as the challenges it poses, justice is gaining more and more importance in the management of cultural diversity within societies.

But how can we deal with cultural diversity? As it was here outlined, the issue of accommodating cultural and religious diversity is generally addressed through three complementary frameworks and concepts, that are *transnationalism*, *cultural diversity*, and *multiculturalism,* which can help us to better highlight the crucial and specific role of the judiciary in plural societies.
However, accommodating cultural diversity is a complex process and it involves not only those directly engaged in justice but also other figures such as expert witnesses or social work practitioners. In this context, we can see the potential importance of cultural expertise, meant as a help to foster a dialogue between social scientists and legal practitioners, when accommodating diversity is at stake.
As seen above, however, such an engagement is still very fragile, at least in the Italian context, and this highlights the difficulties in fostering exchange between the two disciplines, even though the potential importance.
Focusing on cultural differences and family and juvenile law, within the frame of the court ruling, the importance of judicial courts emerges in giving space for encounters and tensions. In a context where not enough space is given to other professional figures, how do lawyers and judges manage cultural diversity in their daily work?

2. Exploring Concepts

> Law may be about reason. But it is also about power. Power may take any number of forms—from sovereign command and brutal force to subtle social pressure and appeals to apology—but the effects will be deeply entrenched in the overall structure of power through which that society enacts its cherished values or the interests of those who possess control (Rosen, 2006, p.163)

The intersection of power and culture becomes particularly evident within the realm of law. From both a practical and theoretical standpoint, a central question arises: why should the state intervene in what are, fundamentally, private arrangements? The legal implications of this question become complex when we consider the shifting concepts of individuality, the legitimacy of state intervention, and the evolving nature of family in our changing society.
As Rosen (2006, p.166) puts it, "When a Supreme Court justice speaks of a 'clear and present danger' or how an act may 'shock the conscience of the community,' far more is created than a mere legal concept". The acceptance of guidelines established by those in authority significantly contributes to their enforcement. Legal systems, regardless of their institutionalization and independence from state control, only hold meaning when they serve as platforms for defining the parameters of discourse. The power of words inevitably plays a role in the equation of power. In situations where individuals cross cultural boundaries, particularly when they have limited exposure to how a host country has formulated its laws or when they believe that the laws of their home nations hold greater legitimacy or practical necessity, issues of legal dominance and legal alienation can also come to the forefront (Rosen, 2006). This reflection stands as a vital foundation for exploring this theoretical chapter. Even though the subject of power might not be explicitly labeled or directly addressed in the following discussions, it is crucial to regard it as an undercurrent running throughout the theoretical insights shared here. Not only that, but power, as an underlying presumption and consistent theme, will be equally crucial in dissecting the data collected during the research process.

In the complex terrain of legal institutions, where decisions bear profound societal consequences and justice assumes multifaceted dimensions, the process of decision-making unfurls as an intricate tapestry. This intricate interplay of choice and judgment defies simplification, shaped by a myriad of factors, some evident and others concealed, and calls for a comprehensive exploration of sociological inquiry, legal theory, and cultural studies.
This chapter delves into the theoretical landscape framed by the structure-agency dichotomy. It examines the tension between established legal norms, conventions, and institutional practices

(the 'structure') and the independent judgment and decision-making capabilities of legal professionals, such as lawyers and judges (the 'agency'). Culture, as defined in the first chapter of this work, an ever-present and influential force, not only concerns immigrant people involved in judicial cases, but strongly permeates the legal landscape, encompassing shared norms, values, beliefs, and practices deeply embedded in societies and communities. Lawyers and judges, the key actors involved in this research, inevitably operate within this culturally enriched milieu. Consequently, their actions and decisions, while reflecting varying degrees of individual discretion, are undeniably shaped by the cultural context in which they practice law.
The aim is therefore to understand and navigate the intricate dynamics of decision-making, the nuances of organizational complexities, and the pervasive influence of internal and external legal culture. These elements converge within the revered confines of legal institutions, forming the nucleus of our exploration into the heart of legal practice and the administration of justice and serving as keys that will subsequently aid in contextualizing and positioning the empirical analysis of the collected data.

In the first section of the chapter, the concept of internal and external legal culture is introduced, as a valuable perspective for comprehending the range of actions undertaken by diverse actors within the judicial system. Such an exploration aligns with the previous theoretical discussions outlined and provides a comprehensive framework for the analytical approach.
Thus, the subsequent section of this chapter lays the foundation for our analysis by delving into classic sociological concepts of structure and agency. Following the presentation of these theoretical concepts, the focus shifts to influential scholars like Pierre Bourdieu, whose contributions significantly advance the understanding of these categories and the evolution of the legal field concept. This examination of analytical categories prompts consideration of an alternative theoretical and methodological approach to address the inherent rigidity of this dichotomy.
A significant emphasis is placed on the relational aspect, focusing less on structures, functions, conflicts, frames, roles, or rational deliberation – well-known in sociological discussions.
In the latter part of this chapter, we finally introduce an additional layer of interpretation. The aspiration is not only to scrutinize the perspectives of key actors, such as lawyers and judges but also to underscore the significance of the broader context and the organizational structures within which they operate, drawing insights from organizational studies.
Some concepts arising from neo-institutionalism and organizational studies hold particular importance in comprehending the behaviors exhibited by actors within a diverse array of organizational settings, including the complex realm of jurisprudence. Nevertheless, applying this

theoretical framework to the realm of justice necessitates careful consideration of the unique characteristics inherent to courts.

It unveils the multifaceted decision-making processes, the myriad influences shaping legal practices, and how the legal system navigates the multitude of internal and external stimuli.

2.1 Internal and External Legal Culture

This study relies on Lawrence Friedman's concept of legal culture (1969; 1975), initially introduced as a specialized term, which has since spurred a substantial body of scholarly literature. Given the extensive discourse regarding the purpose and applicability of the legal culture concept, questions related to its definition and methodology assume particular importance.

Friedman notably proposed a distinction between "internal" and "external" legal culture, driven by his interest in understanding the influences of social and technological advancements on legal reform. Additionally, Nelken (2016) advocates for authors to explicitly clarify three essential aspects often assumed in studies of legal culture: (i) the types of facts considered integral to legal culture; (ii) the specific approach within which the concept is employed; and (iii) the normative dimensions inherent in the inquiry. This clarity serves as a valuable tool to navigate the intricate terrain of the legal culture concept, facilitating a departure from the confusion and ambiguity frequently surrounding it (Hamilton, 2021).

Legal culture is now widely acknowledged to be a crucial factor in improving our comprehension of how legal systems function.

Courts of justice have been defined as having authority comparable to that of the executive branch or the legislative branch. Although this claim has typically been extended and unquestioningly accepted, in reality, it has always been more of a mere rhetorical term than an accurate description of actual functions. In truth, the role of courts and judges in a democracy with a civil law legal system barely qualifies as the exercise of power (Toharia, 2011).

The idea of legal culture is tightly related to many theoretical viewpoints, as is typical with sociological concepts. Also for this reason, it has faced a lot of criticism, despite its continued use in literature and everyday speech. The idea has allegedly been used inconsistently over the years, is hazy, and prone to tautology. Additionally, it has been claimed that assessments based on legal culture assume a relatively static and homogeneous understanding of culture, which has been found to be problematic. Finally, detractors object to the assumption that culture influences law without giving adequate consideration to the influence that law has over culture. However, many of these

issues can be avoided by paying close attention to details like the kinds of facts being looked at in a certain case study. As we transition to a global legal culture based on individuality, equality, and rights, it is crucial to acknowledge that Friedman's concept of legal culture is adaptable and dynamic in and of itself. In fact, it was conceived initially to explore the impact of modernity on law and his perspective on legal culture is therefore a dynamic one, indeed (Hamilton, 2021).

It is frequently suggested to draw a distinction between two common lenses.
The first lens focuses on an internal and hierarchical vision of what is lawful; it is the viewpoint of legal operators who regularly apply legal rules and are typically motivated to make officially right and unarguable conclusions. The second lens focuses on a broad and external depiction of what is legal; it represents the viewpoint of common people who define their behaviour and create their own personal pictures of the legal system based on their own attitudes, expectations, judgements, evaluations, and experiences.
This two-fold differentiation offers practical approaches. However, both types of legal culture require further, more detailed articulations in addition to being based on the normal conceptions of various actors.

In addition to being described as an organized system, the judicial system can also be constructed as a decisional system, or more precisely as a collection of decisional circuits that are ultimately focused on deciding on socially significant issues as well as controversies.
It is simple to understand how the decision reemerges, outside the framework of the rules, as a phenomenon created, at least in theory, controllable by law, when the focus of attention is shifted to the organizational and functional peculiarities of the legal system.
Since each legal system has its own set of laws that must be followed, it is essential to show that the system's conclusion results in a decision that can be recognized and contested to a specific and unambiguous degree (Barra, 2015).

2.1.1 Interpretation of the Normative Message and Legal Culture

> How reasons are given in legal systems may, then, reveal much about the institutional history and the cultural meaning of which they partake. (Rosen 2006, p.144)

Interpreting legal normative instructions is one of the key phases in the life of law. The area of legal interpretation offers a good opportunity for experimentation with the many lenses through which the legal and sociological sciences of law view the phenomena of law, namely, on the ideal plane of what ought-to-be and on the plane of empirical reality, respectively. These distinctions are based on the contrasting perspectives that the jurist and the sociologist, who look at law from within and outside the legal system respectively, each bring to bear on the object of interpretative activity.

The problem of interpreting the law can be linked to the phenomenon of applying a normative legal standard created by legislation, which is to say that interpreting the law is best understood as an exegetical action on a normative text created by the legislature. It is important to note right away that the legal system's attributes to this specific sort of norm, which it assumes to be general and abstract, give rise to the interpretation of the law's unique qualities. The methods used by the interpreter to elucidate the meaning of legal standards are, in turn, limited by further particular regulations that specify the appropriate subjects, approaches, and procedures for interpretation itself (Blengino, 2020).

The task of interpretation, i.e. making clear the one and only correct meaning of the legal norm, is basically given to jurisprudence and doctrine. Only judges and academic jurists, in other words, are recognized as the holders of the knowledge, tools and techniques suitable for decoding the meaning of the text of legal norms. The activity of interpretation is also conceived of as politically and morally neutral and not value based.

In contrast, from a legal-sociological perspective, the most inclusive definition of legal interpretation encompasses all processes used to decipher legal documents and determine the prescriptive meaning that most closely matches the original authors' intentions. Such a formulation incorporates one of the crucial turning points that distinguishes between a formalist-legalist approach and a sociological approach to the normative message of a legal type despite its apparent simplicity. This second approach is more interested in reconstructing the actual interpretive procedures that all consociates use when they encounter normative messages of a legal type than it is in determining the best exegetical methods and techniques for arriving at the correct interpretation of the normative text (Blengino, 2020; Pocar, 2002).

This second approach is more interested in reconstructing the actual interpretive procedures that all consociates put in place when they encounter legal normative messages rather than concentrating on the most appropriate exegetical methods and techniques for arriving at the correct interpretation of the normative text. In contrast to legal dogmatism, this viewpoint describes the cognitive and cultural processes that result in as many interpretations as there are social actors who utilize

normative signals to direct and provide meaning to their activities, rather than seeking the genuine meaning of the normative text (Blengino, 2020).

When we look at the issue of judicial interpretation, we can still clearly see the remains of the fixation with the issue of certainty and the avalutativity of the jurists' work that were left over from the modernism and formalism of the legal sphere. By clearly distinguishing factual judgements from value judgments and giving the magistrate the responsibility of creating only the former, such a perspective creates the idea of the magistrate as the mouth of the law. Consequently, interpretive activity is imagined as a set of operations of pure logical deduction, based on the postulate that the general, abstract norm contains within it every possible concrete case.

The reflections of the sociology of law and cognitive psychology emerge from the identification of some essential components of the actual cognitive processes underlying the interpretative activity studied with the tools of empirical research, dispelling both the notion that interpretative activity is solely the province of judges and doctrine and that such activity is exhausted in a logical deductive operation. More specifically:

- By eliminating certain potential meanings of the rule and accommodating others, interpretation creates a connection between the general, abstract norm and the concrete example.
- In empirical reality, interpretative cognitive processes begin with a fact, case, or circumstance that calls for a response, assessment, or choice rather than a formal investigation of the standard. So, they grow according to the so-called problem-solving reasoning pattern. Only after the initial choice has been made does the formal interpretation of the law take over as the legal rationale.

The factors that direct the judge in reconstructing the facts that are the subject of judgment and their legal qualification, to select certain meanings of the norm and to exclude others, refer to normative systems of a non-legal type, to social standards, or to moral and political evaluations. This is also true for rules that are simpler to interpret, but it is especially true when we are dealing with notions that the legal system utilizes without providing a clear explanation, such as "the good father of the family" or "the best interests of the child", etc.

This can only imply reference to social norms of a certain type, evolving customs, prevalent morality, and the customs and usages that distinguish a specific cultural-historical context. In such cases, the legislature itself explicitly leaves it to the interpreter to determine the meaning of such expressions on a case-by-case basis. In the end, judicial interpretation involves choosing non-legal standards to which the interpreter refers, standards that are strongly influenced by his or her value system.

This finding gives rise to a rather expansive understanding of both interpretation and the interpreter as a person. An interpretative operation is a necessary component of every law enforcement operation. Although judicial decision-making is undoubtedly a significant manifestation of this activity, it is truly only one part of living law, which is continuously produced by a wide variety of social, legal, and non-legal actors (Blengino, 2020).

The concept of "living law" helps to pinpoint the cultural dimension's decisive factor in legal interpretation. Here, the term "culture" refers to the collection of attitudes, ideas, and views that define a particular social group. Both the potential interpretations of normative legal signals and the interpretation of legally significant facts are inexorably conditional and filtered by this dimension. The sociology of law uses the term "legal culture" to describe this phenomenon. Legal culture is a term used to describe relatively consistent patterns and patterns of conduct and attitudes that are focused on the law. Its distinguishing characteristics range from institutional facts like the quantity and function of lawyers and the methods used to hire and supervise judges to various forms of behavior like litigation or prisoner rates to encompassing more ephemeral elements like ideas, values, aspirations, and mindsets. Hence, legal culture is a macro variable that affects and engages society on multiple levels. It is the historically determined outcome of a particular socio-economic context, and it influences and manifests itself in the attitudes, representations, values, and reality perceptions of the various social actors functioning in that context. As much as the more sophisticated opinions of the classes professionally engaged in specialized roles in the activities named precisely legal, the expressive culture incorporates the communis opinion around law. In this context, Friedman discusses the necessity of taking into account and differentiating between internal and external legal cultures.
The first expression refers to the set of values, ideologies, and principles that are unique to lawyers, judges, and other professionals working in the legal system, as well as the ways in which these characteristics are reflected in the way that legal practitioners use norms in relation to their designated status within the legal field. By exclusion, external legal culture is instead related to those social actors who are located outside that circle.

> In many legal systems, of course, reasoning styles have developed in ways that appear highly distinctive to the legal domain itself. The categories made available to decision-makers, the analogies that one shares with colleagues, the need to mask the substantive through the technicalities of the procedural may all contribute to a style of logic that separates law from an ordinary citizen’s idea of commonsense reasoning. (Rosen 2006, p.133)

2.1.2 Internal and External Legal Culture: Blurred Boundaries

> Friedman is […] the author of the classic distinction between 'internal' and 'external' legal culture. On the one hand, 'internal legal culture' refers to the ideas and practices of legal professionals; 'external legal culture', on the other hand, is the name given to the opinions, interests, and pressures brought to bear on law by wider social groups (Nelken, 2004, p.8).

There is, in fact, a fundamental similarity among graduates of law schools that is so strong as to imply that the legal profession as a whole is a community in the truest meaning of the word. This unity involves educating people to observe social relations through normative schemes, regardless of their origin or nature, to interpret norms using techniques that, despite obvious differences, are very similar everywhere, to relate norms to one another in a methodical manner, and, ultimately, to apply this unusual form of knowledge in real life (Ferrari, 2021).

In reality, drawing a clear demarcation between internal and external legal cultures presents a challenge for two primary reasons: the first pertains to defining the legal practitioners themselves, and the second relates to the precise delineation of their roles. Identifying individuals within the sphere of the legal system and establishing the criteria for defining this domain should be viewed in the context of internal legal culture, which encapsulates its unique values, philosophies, and principles. Legal practitioners include a wide range of professionals working within the legal system for various purposes, encompassing judges, attorneys, academic jurists, and other legal professions such as notaries, labor consultants, corporate lawyers, and more.

While possessing a law degree serves as an initial identifying factor for those part of internal legal culture, it is important to acknowledge that not all those engaged in legal practice have a formal legal education. The second factor contributing to the challenge in distinguishing internal and external legal cultures revolves around the actual interpretation of legal rules in practice. Each attorney navigates the responsibility of interpretation, balancing the demands of their professional training with external standards and values that influence their actions beyond their professional obligations. This tension exists to varying degrees, indicating that the actions of legal practitioners are not strictly confined to formal legal constraints but are continuously influenced by non-legal factors. Likewise, non-experts' perceptions and attitudes toward the realm of law may also reflect elements of internal legal culture that have permeated the wider popular culture.
The diversity of viewpoints held by persons participating in internal legal culture is another factor that makes it difficult to provide a comprehensive definition of such issue. In fact, how a legal practitioner perceives his or her legal function and associated institutional aims is intrinsically

linked to the activity of interpreting and applying legal norms. From the earliest societies onward, it is feasible to identify actors or social groups tasked with enforcing new laws, persons who provide behavioral guidance, and those who resolve disputes. In every society, therefore, legislators, lawyers, and judges are recognizable. The complexity of the processes of law implementation is increased by the fact that within the legal field the social groups corresponding to these roles – magistrates, lawyers, legislators, and bureaucrats – not only not infrequently stand in conflict with each other but are not even internally homogeneous.

As noted by Nelken (2004):

> Differences between places in the same society may often be considerable. Legal culture is not necessarily uniform (organizationally and meaningfully) across different branches of law. Lawyers specialising in some subjects may have less in common with other lawyers outside their field than they have with those abroad (Nelken, 2004, p.3).

The community and organization in which legal professionals work—a court, a public prosecutor's office, a public office, etc.—as well as the function they play, turn out to have an impact on how they understand norms. The activity of legal interpretation is continually influenced by extra-legal limitations and references by placing the actions of legal professionals inside the unique systems of social action in which they function (organizational, economic, public efficiency...).

Even more specifically, this kind of monitoring reveals the connections between this activity and their interactions with coworkers, interactions with other local professionals, and the particulars of the local milieu in which they operate. The uniformity in the ways of thinking, comprehending, and assessing legal standards that distinguish the various social actors acting in the same setting leads to the formation of distinctive local legal cultures.

Indeed, it is imperative to explore legal culture patterns not only at the state level but also within micro and macro contexts. Legal culture patterns should be investigated at sub-national levels, where the appropriate units might involve the local court, the prosecutor's office, or the lawyer's consulting room (Nelken, 2004).

> The use of norms is largely the result of the individual and/or collective cognitive processes of professional groups (prosecutors, judges, lawyers and any other actors within the justice system), which reflect their attitudes, opinions, values and inclinations in group actions with the aim of adapting the law. Aspects encapsulated in the concept of 'internal legal culture' (Nelken, Zanier 2006, p. 145).

It has been said that in the socio-legal approach, law ceases to be represented as a closed, independent system consisting essentially of formal norms. On the one hand, it comes to encompass all the norms that regulate social life and, on the other, it requires observing the ways in which

formal norms find application within the area of contact between official behavior and the one of "non-lawyers".

The practical use of law in people's daily lives who do not utilize it professionally depends on a number of variables. Since the legal profession is primarily a communicative one, the ways in which legal normative messages influence and explain how people behave also depend on how well-informed they are about legal norms, how they interpret them, how they feel about them, and how they judge and value them. The external legal culture is therefore constituted of these several factors.

Roger Cotterrell has contended that the concept of legal culture is too abstract and subjective to be effectively used in constructing explanations. In response, Lawrence Friedman, credited as the originator of the term, argues that it is no less precise than other broad concepts in social science. While the concept itself may not be quantifiable, it encompasses a broad spectrum of phenomena that can be measured. In explanatory contexts, legal culture plays a crucial role by capturing a fundamental intervening factor that influences the nature of legal changes following significant social transformations, such as those resulting from technological advancements. More broadly, legal culture dictates when, why, and where individuals seek legal assistance or turn to other institutions, or simply choose to accept the status quo (Nelken, 2004).

In conclusion, the socio-legal approach reshapes the traditional understanding of law as an isolated, formal system by extending its scope to include all norms regulating social life. This perspective emphasizes the crucial area where formal legal norms interact with the behavior of non-professionals. The practical application of law in the lives of individuals who are not legal professionals is contingent upon various influencing factors. As the legal profession primarily revolves around communication, the impact of legal norms on behavior hinges on individuals' awareness, interpretation, feelings, judgments, and value placed on these norms[27]. This forms the external legal culture, constituted by these multifaceted factors. While the concept of legal culture has been criticized for its subjective nature, it serves as an indispensable tool for understanding societal changes, influencing the patterns of legal transformation following significant social shifts. In essence, legal culture plays a pivotal role in determining when and why individuals seek legal redress or resort to other institutional solutions or simply accept the status quo, shaping their interactions with the legal system and beyond.

[27] The interaction between citizens and positive law is highly intricate and extends beyond a simple matter of effective communication between the legal source issuing the normative message and its recipient (Blengino, 2020). Exploring how opinions, representations, and judgments about these messages impact the everyday lives of individuals who are not legal experts constitutes the focus of research within the field known as Legal Consciousness Studies. To further explore, see Sarat & Kearns, 1993; Ewick & Silbey, 1998.

2.2 Structure and Agency: Concepts, Fields, and Tensions

Exploring the interplay between culture and the decision-making processes of lawyers and judges in legal cases and addressing the question of to what extent and how they take culture into account when adjudicating legal cases is a complex endeavor that necessitates a comprehensive understanding of sociological theoretical debates. This inquiry unfolds within the broader framework of the structure-agency dichotomy—a dialectic that grapples with the dynamic balance between societal structures, termed "structure," and the capacity of individuals, known as "agency", to shape legal outcomes. This inquiry is therefore fundamentally rooted in the tension between the constraints imposed by established legal norms, conventions, and institutional practices and the independent judgment and decision-making capability of legal actors.

Such theoretical discussion has direct relevance to the social sciences exploration of the interplay between structure and agency. The debate gained prominence as a response to the challenges faced by structuralism. Structuralist approaches, epitomized by Levi-Strauss (1974), initially overshadowed subjectivity, emphasizing the regularity and coherence of cognitive structures. This movement even attempted to temporarily minimize the role of subjectivity. In this context, Michel Foucault's 1970 declaration of "the Death of Man" and Jacques Lacan's (2007) assertion that the Freudian unconscious is "structured as a language" underscored the significance of structural constraints on human subjectivity.

However, the structuralist crisis in the 1980s prompted a reevaluation, marked by an increasing recognition of the role of agency. In Europe, the period of significant sociological inquiries into agency during the 1980s closely followed debates surrounding the concept of the subject that were enriched by French philosophy. Such philosophical discourse, particularly influenced by Foucault's historical analysis (2005), Derrida's linguistic deconstruction (1974), and Deleuze's materialistic references (1988), as well as the German philosophical tradition, notably the contrast between Heidegger and the Frankfurt School (Habermas 1987), laid the foundation for these discussions. Furthermore, the European discourse on agency, as articulated by figures such as Bourdieu (1980), Habermas (1988), or Giddens (1984) cannot be disentangled from the philosophical context in which the capacity of the subject plays a crucial role.

Despite its prevalent usage, however, the concept of agency continues to exhibit a diverse range of meanings. This diversity can be linked to the origins of sociology, various philosophical interpretations of the subject as an agent, debates between functionalist and interactionist

perspectives, the definition of rationality concerning an individual's decision-making abilities, the expression of agency through the performance of practices, and its connection with self-reflection (Rebughini, Colombo 2023).

In fact, from one perspective, the term agency is used to describe the ability to shape society from the ground up, viewing it as a product of tangible actions and effective communication. Simultaneously, agency is deeply entwined with power dynamics and the conflict between the individual and the social structure with its controlling regulations. It signifies an individual's capacity for self-directed actions, the choices and decisions they can make, and their ability to address internalized forms of conformity. Furthermore, numerous studies focusing on agency and its relationship with structure have viewed them as interconnected and mutually reinforcing rather than fundamentally at odds with each other, as advocated by Giddens (1984). This viewpoint has even led some scholars, particularly in political sociology, to incorporate agency into the processes of institutionalization (Rebughini, Colombo, 2023). Agency, therefore, emerges when an action transcends mere engagement in an activity or compliance with its objectives, and it exhibits a certain level of self-awareness (Giddens, 1991). This interpretation of agency inherently links to a forward-looking perspective, aligning with the modern concept of the subject as an independent, decision-making agent.

> At least in Europe, the decades of impassioned debate on subjectivation and domination, on dissolution of the subject and rational choice approaches, have not unhinged a concept of agency that continues to be implicitly associated with choice and initiative, freedom and creativity, from a general basis in intentionality. Consequently, the agency/structure binarism persists as a general framework of reference (Rebughini, Colombo, 2023, p.24).

Therefore, as mentioned, in Europe the 1980s and 1990s witnessed the rise of influential theoretical frameworks presented by scholars like Bourdieu, Giddens, Touraine, Habermas, and Latour. These scholars played a pivotal role in rejuvenating social theory by addressing enduring ambiguities, including actor/structure, subjectivism/objectivism, and nature/culture. Throughout the annals of sociological discourse, the perennial tension between the aspirations and liberties of individuals and the external constraints that shape their actions has been depicted and analyzed through the conceptual lens of agency and structure. Within the discourse surrounding the interplay of structure and agency, one encounters a rich tapestry of perspectives. Given the inherent interdependence of these dimensions, some scholars advocate transcending the dualism that often characterizes discussions of this nature. This perspective, championed by thinkers like Giddens (1976) and Sibeon (1999), underscores the merger of structure and agency, encapsulated eloquently as the "duality of structure". This conceptual dichotomy, as expounded by

Giddens in his seminal work of 1984, has served as a pivotal framework for understanding the complex interplay between human agency and the overarching structures that exert influence over their lives.

Against this backdrop, Giddens' Structuration Theory has garnered significant attention in the field of organizational studies (1976, 1984), emphasizing agency as the dynamic locus of structural reproduction, thus challenging the transcendental nature of structures and grounding them in the materiality of history. These theories, which gained substantial influence in subsequent years, advocated a dialectical relationship between structure and agency: structures inform social reality, but their existence is contingent upon their active production and reproduction by social actors.

Delving deeper into the duality structure/agency, one discerns that it delineates two fundamental aspects of the human experience. On one facet, it acknowledges the inherent human capacity for decision-making and the consequential power to shape one's immediate surroundings. This facet underscores the inherent agency possessed by individuals as they navigate their social milieu. Conversely, on the other facet, it acknowledges the omnipresent role of extrinsic social realities or structures, such as institutions and cultural norms, in steering and influencing human behavior. Herein lies the structural dimension, which shapes the contours of individual actions and choices.

However, another contingent of scholars espouses an ontological dualism, positing that agency and structure represent distinct phenomena. In their view, agency is the subjective realm of human actors, while structure embodies the objective, external framework that influences human behavior. Thinkers like Archer (1995) and Bhaskar (1993), for example, lend their voices to this perspective. Adding further nuance to this discourse, some theorists, including Mouzelis (1995), propose that both duality—the convergence of agency and structure—and dualism—the differentiation between them—are simultaneously present in the social realm. Duality emerges when actors routinely reproduce social structures through their activities, while dualism manifests when actors strategically distance themselves from these structures for various purposes, including monitoring and adaptation. These multifaceted perspectives engender a rich intellectual landscape where the dynamics of agency and structure continue to be explored and debated, revealing the intricate interplay that characterizes human society.

In this intricate theoretical tapestry, the concepts of habitus and field, as proposed by Bourdieu (1977), emerge as prominent responses to the enduring conundrum of structure and agency. These conceptual tools offer valuable insights into the complex interplay between individuals' internalization of social structures and their active role in shaping these very structures through their

actions. "Habitus" refers to the gradual embodiment of social conditioning, resulting in a specific subjectivity that shapes individuals' behaviors and practices. According to Bourdieu, people occupy identifiable positions within society, often determined by factors such as class, gender, and profession, that exert a formative influence on individuals, fostering shared subjectivities among community members. Participation in social groups or engagement in communal activities involves a process of socialization that molds individuals' future inclinations and actions. Bourdieu's perspective replaces the abstract notion of social space with the more tangible concept of society grounded in common sense. Within this sociological framework, individuals, both as isolated agents and collective entities, find themselves situated in a multifaceted landscape divided into sectors, spheres, and regions—referred to as "fields" by Bourdieu. These fields represent social microcosms, each with its distinct objectives, rules, and structures of authority, accompanied by a degree of autonomy. Fields, as Bourdieu defines them, constitute structured spaces wherein dynamic forces influence the individuals and entities within their boundaries. The field is, therefore, an analytical framework characterized by the interconnectedness of entities that form a system of positions, including ownership relationships.

Social actors, unlike mere particles subject to external forces or substances that outwardly express their inherent nature, serve as carriers of capital and initiators of arrangement patterns. Due to their possession of capital and practical inclinations, they tend to actively align themselves with field-specific interests, either to uphold the prevailing distribution of capital or to challenge the established distribution order.

Thus, the social field functions as a tool to holistically represent two systematic structures: the underlying constituent forces and the ongoing struggles aimed at either transforming or maintaining the configuration of these forces. As such, it serves as a mechanism that integrates both the static and dynamic aspects of the structure. However, the relationship between statics and dynamics within this context is fundamentally structural and dialectical.

Therefore, the concept of "relationality" emerges as an epistemological principle associated with the notion of fields. To think relationally implies contextualizing entities and evaluating their value not in isolation but in relation to other entities within different contextual settings. This approach considers differences and similarities among entities in diverse contexts.

In Bourdieu's sociological framework, the network of connections that binds individuals together assumes paramount significance. His sociology is characterized as a relational mode of thinking, wherein the dialectical interplay between objective structures and subjective constructions defines the social reality we encounter and the environment in which we dwell. This dynamic encompasses tangible elements—such as financial resources, societal norms, beliefs, and institutions—and

internalized mental frameworks, which facilitate daily survival through modes of behavior, attitudes, emotions, and feelings. He underscores the interdependence of subjective constructs and objective reality, which explains his characterization of his social theory as "constructivist structuralism" or "praxeology." This mutual influence unfolds within specific social "universes" or "worlds," termed "fields" by Bourdieu, inhabited by interconnected individuals mandated to act as active agents.

Such fields, according to Bourdieu, are numerous, corresponding therefore to the multitude of social spheres, that constitute social spaces wherein agents engage in symbolic conflicts, representing fields of power relations. During their development, each field attains a degree of autonomy, formulating its own laws, rules, and agreements binding only to its members. However, complete autonomy remains elusive, as each social microcosm maintains intricate connections with the broader social macrocosm.

Against this backdrop, Bourdieu's approach stands out for its strong emphasis on empirical research and its objective examination of introspection and constructivism.

Unlike many of his contemporaries, he committed significant effort to the collection of data, conducting interviews, and collaborating with a team of social scientists to conduct extensive empirical studies.

In Bourdieu's view, constructivism involves a critical assessment of findings from empirical sociological research while maintaining a high degree of self-reflexivity regarding both the conditions under which the research is produced and the limitations inherent in it. This practice emerges from the necessity to challenge preconceived notions deeply ingrained in researchers during their fieldwork, as well as from the need to organize collective intellectual efforts to overcome these biases (Bourdieu, 1987; Bigo, 2011).

In 1987, Bourdieu embarked on a field investigation with a specific focus on the legal profession. His research delved deeply into the inner workings of the legal system and its practitioners, examining their perceptions of their own work, the mechanisms through which these professionals' conceptions of the law, as well as those of others in their society, are shaped, sustained, and disseminated. Additionally, Bourdieu explored the social consequences of the work conducted by legal professionals, both within the legal field and beyond. Similar to the perspective of Max Weber, Bourdieu (1987) underscored the formal and artificial nature of legal procedures, with a particular emphasis on the empowerment and legitimation of the legal profession. Within this field, legal actors, such as lawyers and judges, are engaged in a spirited competition for both symbolic and material capital. Their endeavors revolve around the quest for recognition, prestige, and influence, shaping their behaviors and decisions. At its core, his central assertion was

that the juridical field, akin to any other social field, is characterized by a set of internal protocols, behaviors, and values that collectively constitute what can informally be referred to as a "legal culture". This culture, Bourdieu argued, possesses a degree of autonomy, albeit incomplete (Terdiman, 1987).

In sociological theory, individuals are viewed as central points where societal norms and expectations intersect and radiate outward. This perspective underscores the constant interplay between individualism and sociality. The examination of roles within normative professions, such as the legal field, which is characterized by strong and enduring normativity, necessitates an exploration of internal articulations, reciprocal relationships, and interactions with other social groups. These intricate webs of social connections are vital for understanding not only the legal phenomenon but also the broader dynamics of the social order. Within this framework, the authority to develop, interpret, and implement legal rules assumes a prominent role as a symbolic representation of common sentiment and popular morality within a community (Ferrari, 2021).

Legal professionals, including lawyers and judges, operate within the same sphere of social action, sharing roles in the administration of justice. This shared role grants them the power to influence or constrain the behavior of others, which often leads to apparent conflicts. Precisely delineating the boundaries of their spheres of influence has proven to be a formidable challenge in modern constitutionalism. This challenge extends beyond public figures to encompass private actors, including attorneys and academic jurists. Even jurists lacking explicit normative powers wield substantial influence, contributing to legal interpretations, organizing legal information, influencing lawmakers and courts, and shaping contractual models (Bourdieu, 1987).
Within the legal system, there exists an ongoing struggle for exclusive authority to determine the law. This conflict involves actors possessing technical competence rooted in social dynamics, primarily the ability to interpret texts that define an accepted understanding of social reality. Recognizing this struggle is essential for comprehending the law's relative autonomy and the symbolic impact stemming from the misconception that the law operates in complete independence from external influences (Bourdieu, 1987).
Therefore, Bourdieu employed the mentioned concepts to elucidate the fundamental rationale behind actual behaviors. His method involves interpreting empirical evidence to delineate the structure and workings of specific fields, the allocation of resources, and the habitual tendencies of the individuals involved (Moore, 2012; Thompson, 2003). An instance of this approach was Bourdieu's examination of the legal realm (1987, p. 833). Here, he utilized the concept of habitus to elucidate the coherence of judicial practices:

> The predictability and calculability that Weber imputed to 'rational law' doubtless arise more than anything else from the consistency and homogeneity of the legal habitus. Shaped through legal studies and the practice of the legal profession on the basis of a kind of common familial experience, the prevalent dispositions of the legal habitus operate like categories of perception and judgment that structure the perception and judgment of ordinary conflicts, and orient the work which converts them into juridical confrontations.

As previously discussed, the structure/agency dichotomy has been a central topic in social theory, with a focus on examining the influence of social structures and individual agency on social phenomena. This debate prompts questions about how legal institutions affect legal outcomes and, conversely, how legal actors exercise agency within these structures in the context of the legal field. Judges and lawyers, central figures in the legal arena, do not operate in isolation but exist within a dynamic network of interactions. They engage not only in a continuous interplay with other individuals but also actively participate in shaping the very environment in which they work, particularly within the courtroom, meant not as the sole context of these interactions, but as a primary backdrop, instead.

Besides what presented so far, organizational theory can be an interesting lens to explore the formal structure and culture of these organizations. It clarifies how roles are established, how communication operates, and how decisions are made within the company. Therefore, it is possible to understand how the organizational structure and culture affect interactions and cultural diversity-related strategies.

The formal duties and responsibilities that people have inside the organization are made clearer by organizational theory, which complements this. It also takes into account how the culture and norms of the organization may influence how these players view and react to challenges involving cultural diversity. By combining the two strategies, we may examine whether there is agreement or discord between what the positions require and what actually occurs when managing cultural diversity inside the organization.

In the next paragraph, it is here going to be presented, although surely in a non-exhaustive way, the main characteristics of organizational theory, useful therefore to further explore the main issues of this work.

2.3 Organizational Dynamics of the Family and Juvenile Court: An Analytical Approach

This paragraph aims to explore the 'justice system' from an organizational perspective, offering us profound insights into how it practically operates, within the realm of family and juvenile law. In Romano's (1977) words, law, even before being a norm, is the "organization, structure, position of society itself'; in short, it is “an order more than a norm; an order before a norm" (Romano, 1977, p.150).

What is the added value that organizational theory can bring to the study of justice? In contrast to a strictly legal and formal approach that primarily focuses on the regulations and structures governing the judicial domain, the organizational viewpoint can offer some insights related to a systemic approach, as articulated by Dallara and Verzelloni (2022), useful to deal with the way cultural diversity is managed within courtrooms. This perspective, in fact, goes beyond mere scrutiny of the court's internal workings; it also encompasses its interactions with the external environment, illuminating the complex dynamics inherent in the judicial system. Essentially, this approach involves a comprehensive examination of judicial systems as intricate organizational entities. Rather than limiting our analysis to structural aspects, we delve into the behaviors and actions of individual participants, providing a holistic view of how the justice system functions.

To further our analysis, however, it is important to better define some key characteristics of the functioning of family courtrooms, though in a very concise way: defining how a family courtroom works is in fact essential when exploring the justice system from an organizational perspective. Understanding the practical functioning of family courtrooms, including their processes, procedures, and interactions among participants, serves here as a foundational framework for the subsequent organizational analysis.

In Italy, civil courtrooms dedicated to addressing family matters, including divorce, child custody, alimony, and related concerns, adhere to a structured framework defined by specific legal procedures and protocols. These courtrooms operate within a carefully delineated jurisdiction, where specialized family courts, such as the "Tribunale per i Minorenni" and the specialized sections within ordinary civil courts are entrusted with resolving family-related issues. The process of initiating a family law case in Italy involves the filing of a formal written application or petition with the relevant family court. This initiates a chain of events where the petitioner provides a comprehensive account of the family matter, including pertinent facts and legal claims. Furthermore, within the Italian family court system, there is a significant emphasis on exploring the potential for amicable resolution. Similar to other civil cases, family law disputes may undergo a

preliminary conference. This stage offers parties the opportunity to engage in mediation, aiming to reach mutually acceptable agreements on critical aspects such as child custody, visitation arrangements, and financial support. The court often encourages mediation and alternative dispute resolution mechanisms to foster harmonious settlements. Moreover, the presentation of evidence and witnesses plays a pivotal role in family law proceedings. Both parties are allowed to present their evidence and call witnesses to substantiate their claims. This evidence may include documents, testimonies, and expert opinions, especially in cases involving child custody or financial support. The role of the judge in family law cases, especially concerning child custody and visitation arrangements, cannot be understated. Judges actively engage in assessing the best interests of the child. This may involve conducting interviews with the children involved and consulting with experts, such as psychologists or social workers, to gain a comprehensive understanding of the family dynamics. Once all evidence has been considered, assessments conducted, and deliberations completed, the family court issues a judgment. This judgment encompasses various aspects, including divorce decrees, child custody arrangements, visitation schedules, alimony orders, and property division. Importantly, these court decisions hold legally binding force.
In cases where one or both parties are dissatisfied with the court's judgment, avenues for appeal exist. Appeals in family law cases typically find their way to the Court of Appeals (Corte d'Appello), which scrutinizes the case for legal errors or irregularities.

However, the Italian justice system is not static, and it is currently undergoing a comprehensive reform, as mentioned in the previous chapter. On September 9, 2021, in an unexpected turn of events, the Senate's Justice Commission approved a reformulation by the rapporteurs of the sub-amendments to the bill AS No. 1662.
Such reform encompasses several significant changes, one of which is the establishment of the Court for Persons, Juveniles, and Families. This new entity will merge the functions of the Juvenile Court and extend its jurisdiction to cover both civil and criminal cases, expecting to streamline legal proceedings, making the judicial system more efficient and responsive to the evolving needs of society. Consequently, an important regulatory reform was passed at the conclusion of the Commission's deliberations. Additionally, it will assume responsibility for the civil jurisdiction regarding the status and capacity of individuals and families, which was previously handled by the regular courts. This new court will consist of district chambers established at each Court of Appeal location, as well as district chambers located at each ordinary court within the district. Objective of the reform is also to expand the jurisdiction of the new court, encompassing civil matters related to the status and capacity of individuals and families, thus creating a more comprehensive and unified approach to family-related legal matters. In doing so, this approach

should ensure the court to provide a holistic view of family cases, aligning with the concept of best interests.

It is important to recognize that Italian family law places a strong emphasis on protecting the best interests of children entangled in family disputes, as already mentioned in the first chapter of this work. This guiding principle, in fact, informs the decisions made by judges in family court proceedings, especially when determining custody and visitation arrangements. Within this context, specialized family law lawyers possess the knowledge and expertise necessary to navigate the intricate legal processes and protect the rights and interests of their clients.

Having briefly outlined the functioning of the juvenile and family courts, the following section will now provide a concise overview of institutionalism within organizational theories, though not in an exhaustive manner, as it is not central to our objectives. Nevertheless, delving into the historical development of these concepts will help us better position our research within the existing body of knowledge. This, in turn, underscores the significance of comprehending the various intricacies and perspectives related to these themes in our subsequent data analysis.

2.3.1 Institutions and Organizations: Early Theorists

First of all, it is possible to briefly define organizations as distinct forms of institutions, featuring well-defined boundaries that distinguish members from non-members. What sets organizations apart is their hierarchical structure, marked by a chain of command. Within organizations, roles, responsibilities, authority, and spheres of influence are clearly delineated. They also arrange members into a hierarchical structure with a designated leader. However, the realm of organizational theory unfolds as a diverse and multifaceted terrain, marked by its fragmented and heterogeneous nature. On the other hand, institutions, which encompass the often-unquestioned structures, behaviors, and values shaping the beliefs, actions, and aspirations of individuals and organizations within their domain, have increasingly been viewed in recent years as fundamentally rooted in processes. Although this perspective may not have been immediately apparent in some earlier institutional theory literature (Reay, Zilber, Langley, Tsoukas, 2019) the prevailing understanding is that institutions emerge through a process known as institutionalization, as initially posited by DiMaggio and Powell (1983). In our endeavor to discern the defining characteristics of this expansive domain, it proves beneficial to embark on a brief exploration of institutions and organizational studies. It is important to note that our aim is not to present an all-encompassing review but rather to illuminate key facets, beginning with the foundational insights of early

institutional theorists and subsequently delving into the amalgamation of institutional theory with the field of organizational studies.

The term institution is typically employed in distinct yet comparable ways, that is mainly as a term encompassing any force, mechanism, or phenomenon that persists indefinitely.[28].

> *Institutional theory* presents a paradox. Institutional analysis is as old as Emile Durkheim's exhortation to study "social facts as things", yet sufficiently novel to be preceded by *new* in much of the contemporary literature. Institutionalism purportedly represents a distinctive approach to the study of social, economic, and political phenomena: yet it is often easier to gain agreement about what it is *not* than about what it *is* (Di Maggio, Powell 1983, p.1).

Compared to political science and economics, sociology has consistently highlighted the role of institutions. There is an underlying continuity from early sociologists like Spencer and Sumner to more current researchers like Friedland and Alford, despite the emergence of many strands of thinking and vocabulary over time. Modern philosophers like Parsons, DiMaggio, and Powell have been inspired by even the most influential sociologists, such as Marx, Durkheim, and Weber. From Mead and Schutz's investigation of the social origins of the mind and self to Berger, Luckmann, and Meyer's examples of cognitive processes and knowledge systems, the idea of institutions in sociology has changed.

Undoubtedly, Herbert Spencer stands as a pivotal figure in the development of institutional thought that significantly influenced mainstream sociology throughout the 20th century. Spencer's perspective, articulated in works spanning from 1876 to 1910, posits society as an organic system undergoing temporal transformations. He introduces the concept of specialized "organs" functioning within institutional subsystems, a framework designed to facilitate the system's adaptation to its environment. Building upon Spencer's seminal ideas, William Graham Sumner, in his 1906 work "Folkways," further expands upon these concepts. Sumner contends that an institution comprises both a conceptual aspect, encompassing ideas, notions, doctrines, and interests, and a structural facet. This structure serves as the embodiment of the institution's

[28] Just as with the term organization, a pervasive use of this concept in sociology can also be observed with regard to institution. As pointed out by Pennisi (1998, p.51): "The institution in the sociological sense has been defined as a variously organized group; an organization with socially relevant functions; a set of values and norms; a form of belief and a correlative stabilised practice of action; a set of norms of conduct characteristic of a given social group; a diffuse symbolic system of shared meanings and correlative norms of conduct; a component of the social structure, such as family, mode of production, systems of stratification, etc; a nucleus of values, beliefs and models of behaviour that emerges from interaction and cultural elaboration out of the necessities of associated life; a complex of interrelated roles that perform a strategic function in the social structure towards which social practices, cultural norms and values, personality motivations converge; a superstructure that rationalises the structure of social relations and the corresponding modes of production".

underlying idea and furnishes the means by which this idea is translated into actionable steps, thereby delineating the institution's objectives and functions (Scott, 2014).

The European tradition of institutional analysis found its early scholar in Karl Marx, whose influence left a lasting impact on economics, political science, and sociology. Without going into Marx's vision in detail, it suffices here to recall that while Marx's ideas inspired a diverse range of theories and political movements, his significant contribution to institutional theory revolved around his engagement with and reinterpretation of Hegel's philosophy, turning it upside-down. In Marx's perspective, the material world represents the authentic reality, and the sense of alienation arises due to the separation of humanity from its true self within the existing political and economic frameworks (Marx, 1844; 1845; 1846). Furthermore, Marx utilized the concept of dialectics to examine the unforeseen outcomes that emerge when individuals pursue their interests. Several modern scholars have adopted Marx's dialectical perspective to elucidate how macro-level changes occur in economic and political systems within institutions (Scott, 2014).
Two other prominent European scholars who played crucial roles in developing sociological interpretations of institutional analysis were Durkheim and Weber.
In his mature works, Émile Durkheim places particular emphasis on the symbolic and collective dimensions of institutions. He underscores the pivotal role played by symbolic systems, belief structures, and "collective representations" in shaping societal norms and behaviors. These shared cognitive frameworks, despite often lacking explicit religious connotations, frequently possess moral or spiritual qualities. Durkheim's perspective highlights that while these systems are products of human intervention and subjectivity, they eventually crystallize into objective phenomena. He terms them "social facts," referring to phenomena perceived as external and coercive by individuals due to the sanctions underpinning them (Scott, 2014).

> These systems, although a product of human interaction, are experienced by individuals as objective. Although subjectively formed, they become crystallized. They are, in Durkheim’s (1901/1950) terms, social facts: phenomena perceived by the individual to be both external (to that person) and coercive (backed by sanctions) (Scott, 2014, p.14).

Max Weber, on the other hand, made a significant contribution to the realm of institutional theory. While Weber did not explicitly employ the term "institution," his body of work is infused with a profound aspiration to grasp the functioning of cultural rules in various guises. These rules, ranging from irrational customs to legally binding constitutions and rule systems, play a fundamental role in

defining societal structures and regulating social behaviors, including those related to economic structures and conduct.

American sociologist Talcott Parsons, renowned for his voluntaristic theory of action, undertook the task of integrating the insights of foundational theorists, including Durkheim, Weber, and Freud (Parsons, 1937; 1951). Parsons emerged as a preeminent social theorist in the mid-20th century, emphasizing the notion that normative frameworks existed independently of any specific social actor. He asserted that analysts should consider how individuals orient themselves toward these frameworks, a perspective reminiscent of Weber's approach. In doing so, Parsons sought to reconcile subjective and objective dimensions within the study of social action (Scott, 2014). In more recent times, the French scholar Pierre Bourdieu (1971; 1973) embarked on a quest to amalgamate the insights of Marx and Durkheim. He accomplished this by scrutinizing how class interests manifest themselves in symbolic conflicts, particularly focusing on certain groups' ability to impose their conceptions of knowledge and frameworks of social reality onto others.

A common thread in the early research on institutions was the limited consideration afforded to organizations. While some theorists concentrated on the emergence of shared meanings and normative frameworks through localized social interactions, others directed their analyses toward broader institutional structures. These encompassed constitutions, political systems, language, legal systems, kinship networks, and religious organizations. Few, however, delved into the realm of organizational groups as institutional forms or explored the intricate interplay between larger institutions and groups of organizations.

Social scientists did recognize and study institutions early on. Weber, Tocqueville, and Parsons, among others, demonstrated a keen interest in organizations as a distinct category of social structures. Nevertheless, it is crucial to acknowledge that the foundation for the burgeoning field of organizational studies in the 20th century was primarily laid by engineers, administrative theorists, former executives, and similar figures. Notably, the majority of these early formulations underscored the technocratic and instrumental aspects of organizational forms. Unfortunately, these early studies often neglected the surrounding social and cultural context in which organizations operated.

2.3.2 Neoinstitutionalism

Organizations have undergone significant development and ascended in importance, partly attributed to the creation of distinctive cultural and logical frameworks. These frameworks are

designed to elucidate the nature of both the social and physical realms. Within this context, organizations are perceived as providing robust social structures to facilitate and oversee various programs. These programs are driven by valuable objectives, pursued systematically through regulated and formalized techniques. Consequently, organizations assume the role of pervasive platforms for collective actions as these beliefs become deeply ingrained, extending their influence across diverse spheres of social life (Scott, 2014).

The study of bureaucracy and bureaucratization was given a boost in the late 1940s by a group of Columbia University academics led by Robert K. Merton when significant passages from Max Weber's seminal writings on bureaucracy were made available in English. They explored the causes of bureaucracy and how it affects how people behave in organizations. This comeback is amply demonstrated by their 1952 joint venture. The formal study of organizations emerged as a recognized field of inquiry in the 1950s, marking a pivotal moment when academics began to connect institutional theories with the design and functioning of organizations. This juncture witnessed the development of theories that both expanded upon and diverged from the earlier works of institutional theorists. Scholars such as Merton and his students, along with luminaries like Selznick, Hughes and associates, Parsons, Simon, and March, were instrumental in weaving together institutional arguments with the study of organizations.

Selznick (1949) is notable among these experts for creating a thorough theoretical framework that examined the connection between organizations and institutions. Although his work was distinct from Merton's, Merton's theories had a big impact on it. Merton and Selznick established the foundation for a procedural model of institutions. Merton's work encompassed processes that apply to nearly all bureaucratic organizations, leading officials towards excessive conformity (Merton 1936; 1940; Scott 2014). Meanwhile, Selznick concentrated on the processes taking place within specific organizations, resulting in a unique set of value commitments.

In his earliest works, Selznick (1948) aimed to make a clear distinction between two concepts of organization. One was "organization" as the structural embodiment of rational actions, a mechanistic tool designed for achieving defined objectives. The other was "organization" as an adaptive and organic system influenced by the social traits of its members and the diverse pressures from its surroundings. Over time, these instrumental mechanisms, originally created to achieve specific goals, undergo a transformation into what he termed "institutions".

As elaborated by Selznick (1957) in his subsequent work,

> Institutionalization is a process. It is something that happens to an organization over time, reflecting the organization's own distinctive history, the people who have been in it, the groups it embodies and the vested interests they have created, and the way it has adapted to its environment. […] In what is perhaps its most significant meaning, "to institutionalize" is to infuse with value beyond the technical requirements of the task at hand (Selznick 1957, pp. 16,17).

This time period and such theorizations laid the groundwork for later sociological research in this area and represented a major turning point in the study of organizations and their interactions with larger institutional systems (Scott, 2014).

The predominant modern approach to examining institutions is referred to as new institutionalism, with influential works by scholars like Meyer and Rowan (1977), Powell and DiMaggio (1991), Nee (2005), and Greenwood et al. (2008). This multifaceted framework adopted by the social sciences gained prominence following the decline of economic sociology in the 1960s, filling the void and focusing on the study of organizations and their dynamics, especially within formal economic organizations. It encompasses various approaches, including economic perspectives, which employ economic rationales to elucidate the existence of organizations and institutions. Neoinstitutional sociological theories, on the other hand, draw from an eclectic array of concepts rooted in cognitive psychology, cultural studies, phenomenology, and ethnomethodology. Recent conceptual models within this framework accentuate the importance of cognitive frameworks and place a stronger emphasis on the influence of cultural belief systems operating within organizational contexts, tending to prioritize these aspects over internal processes (Scott, 2014).

Regarding the spread of institutionalist analysis variations, it is important to remember that DiMaggio and Powell stressed in 1991 that there is no such thing as a neo-institutionalist approach, but only a variety of approaches that can be largely attributed to the distinctions between the core social science disciplines. Even more diversity exists in today's scene, but there is also confusion, particularly across the various fields (DiMaggio, Powell, 1991; Vaira, 2003).

An early and significant endeavor to incorporate neoinstitutional perspectives into the study of organizations was undertaken by David Silverman (1971), who put forth an action theory of organization. Silverman proposed a phenomenological approach to understanding organizations, with a specific focus on meaning systems and how they are created and reconstituted in social

actions. Drawing inspiration from Durkheim's insights, Silverman argued that meanings are not confined solely to individuals' minds but also exist as objective social realities embedded within social institutions. In this context, the organizational environment should be perceived not only as a resource provider and output destination but also as a wellspring of meanings for the organization's members. A subsequent endeavor to incorporate neoinstitutional theories into the field of organizational sociology yielded significantly more success. In the same year, two influential articles, authored by Meyer and Rowan (1977) and Zucker (1977), marked the introduction of neoinstitutional theory to the sociological examination of organizations.

Scholars who have examined this matter across various periods (Meyer, Rowan 1977; Zucker 1977; Powell, DiMaggio 1991; Scott 1995; 2008) have contended that institutions and institutionalization are primarily concerned with value systems and processes of legitimization, as opposed to focusing on efficiency and rational resource utilization criteria. According to neoinstitutionalism, historically and socially determined regulatory processes, along with symbolic systems, cognitive constructs, and normative rules, exert influence on the behavior of both organizations (institutions) and the individuals who operate within them. This shift in emphasis highlights the importance of historical continuity and the impact of symbolic systems, as well as the thought processes and reasoning that foster consistency in interactions among various social actors (Zan, 2011).
What might appear irrational and incomprehensible when viewed through the lens of rational means-end efficiency takes on new significance when examined and interpreted through the institutional perspective. This perspective, as demonstrated by Zan (2011), has broadened the horizons of organizational analysis, offering an intriguing framework for comprehending the current work as well.
The process of rationalization can be defined as the gradual shift from an organization’s instrumental function as a means to achieve a specific goal toward an independent value system. This infusion of values not only obscures the efficiency concerns typical of instrumental organizations but also reshapes their logic of action and behavioral styles (Zan, 2003).
In broader terms, an organization transforms into an institution when it garners external support and legitimacy. It garners approval not necessarily for what it accomplishes or how it does so but merely for its existence, its contribution to the broader system’s functionality, and its alignment with the prevailing external norms. This underscores the notion that concerns about efficiency, resource optimization, and goal attainment do not fundamentally define or concern institutions (Ferrante, Zan, 2012).

While symbolic systems, which include rules, norms, and cultural-cognitive beliefs, play a crucial role in institutions, it is essential to consider that the concept should also encompass related behaviors and material resources. An institutional perspective indeed emphasizes the symbolic elements of social life, but we must not overlook the activities responsible for creating, perpetuating, and altering these symbolic elements, as well as the resources that support them. The majority of discussions regarding institutions highlight their ability to regulate and limit behavior. Institutions achieve this by establishing legal, moral, and cultural limits that differentiate between what's deemed acceptable and unacceptable conduct. However, it is essential to acknowledge that institutions also play a vital role in enabling and empowering various activities and individuals. They offer incentives, guidance, and resources for action, in addition to setting forth prohibitions and constraints on behavior.

Examining the institution from an external standpoint yields two convergent perspectives. Firstly, institutions can be seen as organizational forms ensuring the performance of vital tasks within the broader social macrosystem, essential for its overall survival. Secondly, they can be viewed as organizational types intricately aligned with environmental myths. These social myths, organization by widely held and shared belief systems, systematically evolve in the societal context. Notably, myths are devoid of empirical or objective validation standards, despite some individuals perceiving otherwise.

2.3.3 Incorporating Institutions in Organizational Theory: Judicial Organizations

In the realm of socio-legal research, the framework of organization and institution emerges as highly intriguing. After examining the historical and conceptual discourse surrounding these terms, it is possible now to contextualize them within the context of analysis which is the focus here.

The term "institution" itself, as seen in the previous paragraph, carries diverse connotations, frequently invoked in political, legal, and broader scientific discourse. Rather than forging its unique conceptual path, sociology has expanded the horizons of this term, often leading to multiple interpretations. As pointed out by Gallino (1983), at its core, the term "institution" can encompass any normative complex that enduringly structures a domain of social action, encapsulating this shared aspect. This encompassing definition offers several advantages. Firstly, it accommodates both dynamic and static elements, capturing the process leading to outcomes and the outcomes

themselves, inherent in the term's general usage. Secondly, it lends itself well to sociological-legal analysis, particularly when organizing the prominence of legal discipline in specific institutional settings. Thirdly, it allows for the inclusion of diverse legal systems that, while distinct, share substantial similarities, rendering them amenable to similar theoretical and methodological considerations (Ferrari, 2021). Nevertheless, a comprehensive definition of an institution can be outlined as follows: "Institutions comprise regulative, normative, and cultural-cognitive elements that, together with associated activities and resources, provide stability and meaning to social life" (Scott 2014, p. 56). According to this perspective, institutions emerge as intricate, enduring social structures organization by symbolic components, social interactions, and material resources. The ideal institution, therefore, exhibits specific traits: it becomes infused with values, transcending its instrumental nature; personal interests in upholding it grow; widespread loyalty ensues; it aligns isomorphically with prevalent environmental myths; and it persists in representing normative and symbolic systems (Ferrante, Zan, 2012).

In the realm of understanding social phenomena, particularly within the context of organizational theory, the distinction between organizations and institutions holds significant explanatory power. While the notion of locating "pure" organizations in the real world may prove elusive, institutions, on the other hand, are pervasive. This organization/institution dichotomy offers a more robust framework for analysis than merely focusing on organizations with varying degrees of institutionalization. Incorporating the concept of institutions alongside organizational theory, therefore, is crucial for several reasons, each of which enriches our understanding of how social systems, including courts and legal systems, operate. As previously outlined, organizational theory primarily focuses on the internal dynamics and structures of organizations.

While this is valuable for analyzing how organizations function, it often falls short in explaining the broader societal context in which these organizations exist and operate. By working also with the concept of institutions, it is therefore possible to expand the analytical toolkit to encompass the external factors that significantly influence organizational behavior.

Organizations, in fact, are deeply embedded in the socio-cultural, political, and economic fabric of society and understanding the role of institutions is therefore useful to contextualize organizational actions and decisions within the broader societal norms, rules, and belief systems. Three key characteristics underpin institutionalism as an approach, constituting a collection of methodological principles, concepts, theoretical frameworks, and relevant criteria. Firstly, it reflects a pronounced interest in formalized and stabilized social connections, encompassing rules, norms, conventions, contracts, routines, processes, authority structures, constitutions, states, and international regimes. Secondly, institutionalism highlights the importance of long-term processes that frame human

behavior, given its focus on the enduring elements of social life. Lastly, it places significant emphasis on the analysis of normative and cognitive contexts, where perceptions of reality, problem definitions, accessible solutions, and notions of rightness, legitimacy, and appropriateness govern human actions. Regardless of its definition, the institutional component transcends the boundaries of internal organizations and their dynamics, placing them within the broader social context in which each organization operates. The primary impetus behind organization the institutional dimension lies in conferring social validity and meaning upon one's actions. Gaining social legitimacy elucidates the organization's raison d'être, its functions, and its structural design (Zan, 2003).

In summary, the incorporation of the concept of institutions alongside organizational theory does not inherently contradict the organizational theories discussed previously. Instead, it enriches our understanding by emphasizing the pivotal role institutions play in shaping social structures and behavior.

Considering the previous observations, an essential question emerges: can a court be viewed through the lens of organizational theory? Can we, in essence, regard the court as an organization? Zan (2003) challenges this notion, highlighting that neither the court nor government entities possess the conventional managerial levers typically associated with organizations.

The court lacks independent economic resources and institutional figures responsible for coordinating and managing the diverse resources required to support the organization's technical aspects. In reality, the court does not manifest as an autonomous organizational unit capable of independently managing various production factors due to specific local circumstances or peculiarities. Furthermore, it does not function as the peripheral organizational articulation of a larger, national organizational entity. Instead, it serves as the physical arena where a multitude of organizational articulations from distinct administrations are concurrently reflected in watertight compartments, akin to organ pipes (Zan, 2003).

The intricate organizational machinery of the justice system, marked by its multifarious vertical and functional components and its intricate procedural rules, places the responsibility for managing the entire system squarely on the shoulders of individual judges. Consequently, it is not the organization that supports practitioners in their activities but rather the judges who must assume the mantle of overseeing the organization as a whole, especially concerning anticipated outcomes. The acknowledged frailty of the managerial tier within the justice organization necessitates a shift in analysis toward the institutional level (Zan, 2003) and towards the more recent formulation of complex organization defined as a loosely coupled system (Zan, 2011).

In his extensive body of work focused on judicial systems, Zan (2003; 2011) underscores the imperative need to adopt a multifaceted perspective encompassing three pivotal dimensions: the actors, the organizational units, and the overarching system. This holistic approach constitutes the crux of his contribution, elucidating the intricacies of the judicial domain.

The first dimension, often referred to as the "room for maneuver," pertains to the latitude afforded to individuals who execute their roles within a complex organizational framework like the judicial system.

Zan invokes the familiar theatre metaphor cherished by scholars in the social sciences to depict the diverse capacities and roles within this realm, signifying that individuals, in various capacities, perform their functions within this intricate setting. The second dimension delves into the organizational units, entities that provide support to the domain's experts, the magistrates. Here, recognition of the essential interplay between differentiation and integration mechanisms governing intra-organizational processes within judicial offices is paramount. These organizations are aptly described as expert-dependent organizations within the organizational literature, highlighting their reliance on the expertise of the magistrates.

The third dimension concerns the broader organizational system. To truly comprehend the functioning of justice, it is imperative to scrutinize the relationships between the central components and their peripheries. This encompasses an exploration of the myriad ways in which judicial offices interconnect, as well as their interactions with external entities, particularly local institutions such as bar associations. This configuration is often characterized as "loosely coupled systems," in the analytical framework (Dallara, Verzelloni, 2022; Zan, 2011).

In the realm of political and organizational literature, judicial offices earn the classification of "complex organizations" (Zan, 2011). Within the realm of complex organizations, we can identify organizational systems that are (somewhat) loosely coupled systems, distinguished by unique structural setups, consistent behavioral patterns, and distinctive action frameworks, as opposed to (somewhat) tightly coupled systems. Starting from authors such as Weick (1976), Clark (1983), Youn and Murphy (1997), Zan (2011) proposes a definition of loosely coupled systems as those organizational systems characterized by a plurality of organizational units, tending to be autonomous, with low technological and/or hierarchical interdependence.

In loosely coupled systems, there exists a diversity of independent organizational entities. The independence of these organizational units forming the judicial system can be seen along a spectrum ranging from micro to macro, representing the various components that constitute the system itself.

When exploring the Italian courts, no two courts are identical upon closer inspection, neither in their internal structure nor in their level of performance.

At the micro level, the fundamental organizational element in the legal system is the judge. Observations verify the autonomy of individual judges, leading to substantial liberty in service provision. This also reveals a broader application of the principle of autonomy, which not only pertains to independence in decision-making (as protected by the Constitution) but also extends to autonomy concerning organizational and managerial aspects of the cases.
Furthermore, there exists independence in the other divisions within judicial offices (such as civil and criminal courts, juvenile, appellate courts, etc.), so that individual offices are significantly different from one another, albeit restrained by several factors including:

- Constitutional autonomy granted to individual magistrates
- Regulatory standards
- Table process that outlines the parameters steering the formation of organizational structures
- Availability of resources (human and technological)
- Traits, expertise, and abilities of the heads of these divisions.

Hierarchical interdependence refers to how the behavior of one organizational actor, the subordinate, is influenced by the actions of another organizational actor, the superior. In loosely coupled systems, hierarchical interdependence is only partial and is not directly linked to career advancement, compensation, or reward systems.
On the other hand, technological interdependence represents the extent to which one organizational unit's actions are influenced by another. In this context, the law, whether substantive or procedural, acts as the technology guiding judges in making decisions. It does not hinge on the actions of any other organizational unit in the system. Therefore, the technological interdependence between the judge and the back office is considerably weak, and under similar circumstances, it does not ensure uniformity in performance and decision-making, neither in content nor in the tools used.
Another characteristic of loosely coupled systems is the existence of three fundamental behavioral dimensions: self-determination, localism, and redundancy, which stem from the presented structural features.

For what concerns self-determination, it is important to consider that role expectations associated with each organizational unit are generally broad and minimal. For instance, a judge, viewed as an organizational unit, decides autonomously about managing their responsibilities, workload, case

priorities, and so on. The influences attributed to the professional and practice community result from a sense of belonging and identification with a community that dictates job performance and operates within a specific context. In this context, the influence of localized, situation-based practices significantly impacts one's approach to work.

According to Zan (2011), therefore

> The hypothesis is that being a judge [...] depends yes on belonging to a specific professional community, but also on the specific organization in which one operates on a daily basis. Being a judge in Milan is different from exercising the same profession in Montepulciano, even if the reference technology is the same (Zan 2011, p. 97).

Therefore, self-determination implies that the outlined conditions within the structural framework of the system will be interpreted differently based on the individuals involved.
The autonomy, minimal technological and hierarchical interdependence, and the significant emphasis on self-determination contribute to the distinctive feature of strong localism in loosely coupled systems. This denotes the unique structural and behavioral setups adopted by the organizational units within the system, making each unit distinct even when labeled, designated, or functioning similarly (Zan, 2011). Ultimately, the pursuit of redundancy, or seeking varied solutions for the same problem, might cause an irrational resource allocation. However, this approach also encourages the intellectual capacities within the system to devise more refined solutions that align better with local specificities.

These entities function as intricate ecosystems where administrative staff members provide indispensable support to the professional experts and the magistrates. These magistrates, in turn, possess specialized knowledge and considerable discretion in their roles, constituting the bedrock of the judicial system (Dallara, Verzelloni, 2022).
Court employees, legal actors, defendants, witnesses, family members, and locals all operate in such distinct microcosms within the courtroom, and they all interact with one another in order to carry out the daily operations of justice. Courts are, as a result, multifaceted organizations characterized by sophisticated cultures, and these cultures embody values and traditions that shape the operations of the courts.

Despite the features presented so far, which identify such a system as loosely coupled, certain elements exist that enhance the cohesion of the structures and their identification as organizational systems. These include administrative mechanisms, the network of systemic and institutional connections, and governance. Within such elements, it is crucial to stress that suggesting that every

organization functions as a political arena (Crozier, 1963; Friedberg, 1993) underscores that each organization serves as a social domain in which every individual (and group) pursues personal strategies within a set of limitations and utilizing available resources. In this context, individuals transform into organizational participants capable of strategic conduct aimed not only at advancing their interests but also considering the actions of other organizational participants. These actions generate a web of transactional relationships, which, when framed as an unequal distribution of resources, evolve into power dynamics, particularly important for the analysis presented in this work.

In conclusion, it is possible to argue that both concepts of organizations and institutions can be useful for the purposes of the analysis in this thesis. The organizational theory approach is instrumental as it offers a comprehensive perspective on the intricate workings of complex systems, including the realm of justice. Nevertheless, it carries inherent limitations when it comes to distinguishing between the "law in the book" and the "law in action." Restricting analysis solely to the organizational framework runs the risk of yielding outcomes misaligned with reality. On one hand, the de jure organization constitutes a complex system defined by formal operational regulations. On the other, investigations focusing solely on the network of interactions within a judicial office—the de facto organization—may fail to discern the influence of this overarching system (Dallara, Verzelloni, 2022).
In the interactions between human participants and the institution, dialogues oscillate between monologues and confrontations, representing a dynamic interplay of individual agency and institutional structure. The entities encountered in the field are not merely isolated entities but also manifestations of the organization under investigation. The assertion that institutions merely constitute a collection of agents or subjects is a somewhat simplistic presumption unsupported by empirical evidence. Instead, it is more prudent to commence with the premise that institutions possess goals, which may sometimes remain latent, unspoken, or obscured, directed toward internal validation rather than public representation (Vereni, 2017).

Summarizing, it is important to resonate with the thematic discussion presented so far, highlighting the imperative need to encompass institutional perspectives in conjunction with organizational theory, particularly within the intricate landscape of judicial systems. It underscores the multifaceted dimensions at play, from actors to organizational units and the overarching system, and how these components interact within the broader institutional framework. Ultimately, it bolsters our understanding of complex organizations by shedding light on the intricate dynamics and interplay between institutions and actors within judicial systems.

It's crucial to underscore the degree to which individual decisions can demonstrate innovation and independence from institutional frameworks and the broader social backdrop enveloping individuals. This nuance is instrumental in understanding the meaningful nature of political choices. Institutions serve as founts of distinct political aims, goals, and preferences, in addition to shaping an individual's capacity to act on a set of ideas. It is tempting to assert that what truly defines something as an "institution" transcends physical structures; it encompasses a set of discernible habits of thought, encompassing attitudes regarding the roles members within an institution should assume, and how these roles interplay with those of other institutions (Gillman, Clayton, 1999). Organizational theory suggests that lawyers and judges, as key actors within the legal system, are influenced by cultural norms and values. Such a theoretical approach underscores the importance of understanding how actors interpret and navigate cultural norms within a normative framework. Research can delve into the decision-making processes of lawyers and judges, exploring how they incorporate or manage cultural considerations when presenting cases, making legal arguments, and rendering judgments. This helps us to explore how legal institutions, such as courts, adapt to cultural diversity. In dialogue with the research questions at the basis of this work, organizational theory provides a theoretical lens through which to understand how lawyers and judges navigate cultural considerations within the legal system. By examining their decision-making processes, the role of symbolic conflicts, and institutional responses to cultural diversity, research can shed light on how culture is managed and integrated into legal practice. In order to pursue our analysis through this theoretical lens, it is now necessary to introduce a further key concept, namely that of legal culture, which is useful to complete the frame of reference.

2.4 Conclusions

In conclusion, the convergence of the theoretical frameworks presented in this chapter, including both the structure and agency debate, organizational/institutional theory, and the scrutiny of internal legal culture, shed light on the comprehensive and intricate panorama emerging when dealing with professional point of views and legal documents in the context of cultural diversity management within legal institutions.

These theoretical frameworks collectively offer a profound lens through which it is possible to unravel the multifaceted intricacies inherent in decision-making processes within organizations, with a particular focus on the judicial realm.

The pivotal realization is that actions and decisions do not materialize in isolation; rather, they are the result of a multitude of interconnected factors. These factors span the spectrum from the rigid structures and hierarchies that characterize organizational frameworks to the deeply embedded cultural norms that guide and shape the actions of lawyers and judges.

Important sociological concepts have been outlined, using different epistemological traditions such as Bourdieu's.

Moreover, the lens of institutional theory allows for a deeper understanding of the role of formal and informal rules, norms, and structures, and their influence on the behavior within the legal sphere, thus unravelling the intricacies of jurisprudence. Furthermore, the examination of legal documents, in this case judgments, assumes great importance in this discourse. These documents represent more than just records; they are tangible manifestations of the decisions rendered and the intricate dynamics that underlie them. By scrutinizing these documents, it is possible to gain insight into the very essence of decision-making, how it is shaped by organizational structures, influenced by cultural norms, and embedded within the extensive network of actors and elements. Yet, it becomes evident from this rich tapestry of knowledge that contextualizing research within the confines of internal legal culture is more than just a theoretical exercise; it is a transformative endeavor. The cultural crucible in which they operate is where legal professionals confront and negotiate the complex problems posed by cultural diversity. Decisions are carefully constructed within this cultural environment, and it is within this framework that these decisions maintain their significant meaning.

In light of this, the aim is therefore not only to gain a more profound and nuanced understanding of decision-making and cultural diversity management within legal institutions but also to underscore the critical role that culture plays in shaping the very fabric of justice itself. Hence, something that possibly informs and enriches the comprehension of the dynamic and ever-evolving domain of legal practice and justice administration.

The arrangement of judicial and jurisdictional activities within a framework organized into districts and local judicial offices, where different legal professionals work, highlights how the organizational structure and features of the local institutional context significantly influence the process of judicial interpretation. The involvement of magistrates in their duties within a specific organizational setting places judicial reasoning within a web of non-legal factors that help shape the unique legal culture of each district and office (Blengino, 2020; Piana, 2010).

3. The Logic of the Research: Epistemology, Methodology, and Positioning

> The issue of invisibility, or rather the paradoxical idea of observing the unobservable, seems at least at first glance quite inappropriate for an empirical science like sociology. However, what we know about society is based only to a minor extent on observable phenomena, while the majority of our data refer to unobservable ones (Cardano, 2020, p.7).

The aim of this chapter is first and foremost to outline the epistemological and methodological premises underpinning this work, which are fundamental to a better understanding of the theoretical and analytical frame of reference. Thus, the method and the design of the research are outlined, describing all the steps that have been undertaken to carry out the research. Along with the population being studied and the research design, the strategies and tactics employed in the study are here provided. This includes ethical issues and confidentiality, and the data collection and analysis methods, on which the validity and reliability of the findings of the research are based. The second part of the chapter, instead, is useful to contextualize this work within a specific field of studies, finally position my work (and myself) within a fieldwork. In conclusion, the outline of the implications and limitations of the research gives the possibility to read this thesis bearing in mind the specific idea of dealing with applied work, with the hope to contribute to and strengthen the dialogue between social scientists and the legal environment.

3.1 Ontologies and Epistemologies

The pervasive influence of law on a society's political, social, and economic facets is an established fact, and scholars from both the realms of social science and jurisprudence display a distinct preoccupation with understanding the intricate dynamics between power and law (Griffith, 2005). However, it is important to underscore that, depending on the chosen epistemological approach, diverse perspectives come into play, producing distinct insights and outcomes.

Within the expansive domain of social sciences, a multitude of competing approaches emerges, primarily distinguished by their epistemological, ontological, and methodological foundations (Della Porta & Keating, 2020). The ontological dimension delves deep into the fundamental "what"

question, a philosophical quest in its own right, concerning the character and structure of social reality. At its core, this inquiry ponders whether the realm of social phenomena possesses an autonomous, objective existence, independent of human cognition, or if it is a construct shaped and molded by the interpretations individuals ascribe to it. This quandary extends to broader philosophical discussions regarding the very existence of objects and the external world.
When we turn to epistemology, we embark on an exploration of the intricate relationship between the "who" and the "what" and, more importantly, the repercussions of this interaction. This domain grapples with the degree to which social reality can be truly comprehended and places particular emphasis on the dynamic between the observer and the reality being observed. It becomes evident that the answers to ontological questions significantly influence the epistemological stance. The pursuit of an objective and detached comprehension of social reality, uninfluenced by the observer's subjective lens, remains a viable approach (not in my opinion, however) if one posits that social reality exists as an entity unto itself, free from the sway of human agency.

Lastly, the methodological facet broaches the "how" question—how can social reality be rigorously examined and studied? Methodology concerns itself with the technical tools and strategies employed in the cognitive process of inquiry. Naturally, the responses to the preceding ontological and epistemological inquiries shape the approach to methodology. A perspective that underscores interactive processes between the researcher and the object of study may readily adopt manipulative techniques, such as experimentation and variable control. In contrast, a perspective positing social reality as an external entity, impervious to the cognitive procedures of the researcher, might favor divergent methodological approaches (Corbetta, 2003). These inquiries are intrinsically interconnected, not solely because the answers to each query are deeply influenced by the responses to the others but also because it proves challenging to draw crisp boundaries between them. Moreover, distinguishing concepts about the nature of social reality from inquiries into the feasibility and modality of comprehending it, and further distinguishing both from the actual methods employed for such comprehension, is an intricate task (Corbetta, 2003; Della Porta & Keating, 2020).

Throughout the history of social research in the social sciences, two dominant ideologies, namely 'positivism' and 'interpretivism,' have shaped the trajectory of inquiry. 'Positivism' gained prominence in the latter half of the 19th century, buoyed by the success of the natural sciences. Termed "social physics," it advocated for the application of the same logical and methodological rigor to social research as was evident in the natural sciences.

However, as the 20th century unfolded, the original positivist perspective underwent nuanced transformations to transcend its inherent limitations. Emerging paradigms, characterized as neopositivism and postpositivism, championed probabilistic social theories and recognized that empirical observations were never entirely objective, always tinged with the theoretical underpinnings of the observer. In stark contrast, interpretivism posits fundamental disparities between the social and natural sciences. According to this viewpoint, social reality is not merely observed but must be actively "interpreted." It contends that no rigid separation exists between the observer and the observed in the human sciences, necessitating an approach centered on comprehension, or 'Verstehen,' for true understanding. These foundational distinctions naturally give rise to diverse research approaches and methodological choices (Corbetta, 2003)[29].

3.1.1 Constructivism

The realm of (social) constructivism encompasses a set of intriguing concepts. Contrary to common misconceptions, this approach does not argue that social scientists have the power to create the physical world; instead, it emphasizes their role in organizing and structuring it.
As Hacking (1999, p. 33) points out, "Social constructionists tend to maintain that classifications are not determined by how the world is but are convenient ways to represent it." In essence, this perspective contends that theories should not be assessed solely based on their ability to provide a literal description of an independently discoverable reality. Rather, they should be evaluated for their capacity to elucidate and explain the intricacies of the world. Empirical research, far from being a straightforward window into reality, acts as a filter that channels information through the theoretical framework chosen by the researcher (Della Porta & Keating, 2020).

Examining constructivism in its own right, we discern that it serves as the heir to numerous classic epistemological debates, precisely because it does not represent a distinct theory unto itself. Rather, constructivism asserts that social agents perpetually construct social phenomena and the meanings attached to them. It posits that social phenomena and categories are subject to ongoing revision and, crucially, are generated through social interactions. In recent times, this perspective has extended to encompass the notion that scholars' own perceptions of the social world are constructs. In other words, researchers offer a particular interpretation of social reality with every inquiry they undertake. This perspective challenges the notion that categories like organization and

[29] To further develop this issue, see also Cardano (2020), Della Porta, Keating (2020).

culture are preordained and imposed upon social actors from external sources beyond their control (Bryman, 2012).

The roots of the constructivist perspective can be traced back to the field of biology, notably with Maturana and Varela (1992), before it found its application in the social sciences, notably through the work of sociologist Niklas Luhmann. Luhmann's perspective presented a fundamental departure from Talcott Parsons (1968), who had initially developed his social system framework based on a systems approach. In contrast, Luhmann offered a fundamentally new viewpoint on society, marking a shift away from a component-based approach. Rather than commencing with actors and actions, he sought to tackle the Hobbesian challenge of order by employing conventional devices like system and subsystem divisions, each assigned specific functions (Della Porta & Keating, 2020).

Central to the constructivist tenet is the idea that actors' conceptions about their actions carry substantial weight, particularly when one acknowledges the human world as an artifact. These conceptions cannot be dismissed through assumptions or relegated to mere descriptions and explanations of activities. Such an approach would inadvertently naturalize actions, contravening the primary constructivist commitment. Furthermore, constructionism asserts that the very categories employed by individuals to make sense of the social and natural worlds are themselves products of social creation. The meaning assigned to these categories arises within and through interaction rather than inhering them as inherent essences (Bryman, 2012). These categories, utilized by individuals to navigate the social world, are fundamentally social constructs. As Bryman (2012) succinctly puts it, "The categories do not have built-in essences; instead, their meaning is constructed in and through interaction." (Bryman 2012, p.34). This perspective challenges the conventional notion that these categories exist independently of ourselves. Instead, it underscores that the social world and its associated categories are products forged and shaped through interpersonal engagement. Discourse analysis, which we will delve into later, is a prime example that exemplifies this premise.

Moving toward qualitative research, the overarching objective is to grasp events by unearthing the meanings individuals ascribe to their actions and the surrounding milieu. The focus here lies in comprehending the essence of human behavior, particularly the rich tapestry of communities and cultures, rather than in crafting rigid laws that establish correlations between variables. In line with Weber, this strand of social science strives for ‘verstehen,’ an understanding of the motivations that underlie human behavior. Such an endeavor cannot be reduced to a predefined set of components; instead, it necessitates a cultural perspective, wherein culture is conceptualized as a

web woven with shared meanings and values (Della Porta & Keating, 2020). Furthermore, the discourse about social ontology inexorably intertwines with the methods employed in social research. The construction of research questions and the approach to research itself are profoundly influenced by ontological commitments and predispositions.

In essence, the landscape of epistemology in the domain of law often adopts a traditional and positivist stance, characterizing law as a set of impartial, objective rules and principles. This viewpoint tends to prioritize the legitimacy and authority of legal institutions while downplaying the impact of social and political influences on legal norms and institutions. Consequently, law is frequently perceived as an autonomous discipline armed with distinct techniques and methodologies for comprehending legal phenomena, occasionally employing deductive reasoning where legal concepts and regulations are inferred from underlying truths like natural law or constitutional principles. On the contrary, sociology offers a perspective centered on the study of social phenomena, including how social structures and institutions shape human interactions and behaviors. It underscores the significance of comprehending the subjective experiences of both individuals and groups, as well as the social and cultural factors influencing them. When scrutinizing the law, sociology emphasizes its character as a social phenomenon molded by power dynamics and vested interests. This approach adopts an empirical standpoint involving observation, measurement, and analysis. This stands in contrast to black-letter analysis[30], which provides a one-dimensional view of the law and fails to consider the institutional and socio-historical context that invariably influences legal practice and decisions. Instead, it is posited that a coherent system of rules doesn't necessarily mirror the true nature of law, which is more aptly represented as a fragmented collection of practices, necessitating interaction with the social context for effective regulation (Banakar, 2006).

The creation of law transcends the realm of legal authorities and the courts alone. Ordinary people, especially those directly affected, actively contribute to the application of legal concepts in their daily lives. In this sense, laws do not exist solely in a black-letter form, nor do they serve merely as instruments for social control or the resolution of legal disputes. Rather, society interprets and constructs laws to govern individual and societal behavior. Moreover, legal professionals operating within the justice system are integral parts of the social environment, influenced by and contributing to the same social context regulated by the law. Within this context, individuals and social actors establish connections between the political, social, and other contextual factors that frame legal doctrines and concepts and imbue them with meaning.

[30] Doctrinal legal research methodology that focuses on the letter of the law rather than the law in action.

Consequently, legal norms should not be regarded as limited to their textual representation; instead, they demand examination within the broader social structures that govern their application and functioning. By embracing this contextual perspective through the epistemological approach herein, we can uncover intriguing facets of legal institutions, the law itself, and legal practice.

Socio-legal research, therefore, equips us with the tools for a contextual analysis of the law, shedding light on the relevance and consequences of the contexts in which it operates. Approaching law as a social process produces alternative insights distinct from formal legal discourse, which frequently fails to capture the complexities of social differences, identities, and power dynamics. Instead, socio-legal approaches endeavor to comprehend legal concepts from the vantage points and perspectives of the participants, ultimately elucidating underlying issues, which this thesis aims to explore.

As established earlier in this work, a thorough understanding of law necessitates an examination of the "social" dimension, underscoring the central theme of this thesis—the importance of individual perspectives in legal decisions concerning cultural diversity, juxtaposed and included with and within the structures and institutions in which individuals operate. Such a sociological point of view enables a multifaceted and comprehensive exploration, integrating sociological perspectives into the analysis of both the contextual framework and legal texts. This holistic approach further underscores the pivotal roles of individual judges and lawyers within the legal field. Thus, when discussing cultural diversity and the law in a given setting, a constructivist approach provides insightful analysis, especially when looking at the viewpoints of legal players in courtrooms. This method recognizes that social construction and interaction are the sources of social and legal phenomena, including ideas about cultural diversity and its management, rather than being fixed or predetermined. It is important to highlight that legal actors, including judges, lawyers, and other stakeholders, actively participate in the interpretation and application of legal principles in their day-to-day work when it comes to the study of cultural diversity and the law. This viewpoint acknowledges that legal rules have meaning that extends beyond their written forms and is infused with the larger social and cultural settings in which they are practiced. The aim is therefore to investigate the intricacies of how legal actors handle power dynamics, negotiate identity concerns, and traverse cultural diversity in the courtroom by using a constructivist lens to approach such themes. This method clarifies the subtleties of legal practice in multicultural and different cultures and enhances our knowledge of how cultural diversity is created, understood, and negotiated within legal institutions.

3.2 Methodology and Design

Having recalled the theoretical-epistemological implications and illustrated the methodological ones, it is now appropriate to go into more detail on the choices that inform the research as a whole and that specifically oriented the entire data collection phase.
The subject of inquiry here is to determine to what extent lawyers and judges perceive, assess, and manage sociocultural diversity in their daily decision-making, and how the concept of culture is dealt with and with which consequences within the field of law. It was decided to focus specifically on family and juvenile law to answer such main questions. In fact, at least theoretically, such fields often deal with open and broad concepts related to conflicting cultural values, like for example “the best interest of the child”, which can be considered differently according to different cultural perspectives, or more general perceptions of the idea of the family and its relationships, bringing to light the influence of the cultural background on the behavior of the parties involved.

When the Ph.D. started, since it was clear that the intention was to carry on interviews with the main actors involved in the project, the first issue at stake was to delimit the target population for the research. Initially, the idea was to focus on criminal and civil law in the courtroom of Milan, Rome, Napoli, and Palermo, in order to get an overview of the Italian scenario, considering different legal, social, and migration contexts. However, after discussing the research project with the supervisor and many other socio-legal scholars, it was clear that, due to time restrictions, it would not be possible to finalize such research in a consistent way. The core idea behind the project was clear, however. First of all, it was decided that focusing on both criminal and civil law implied different layers of analysis, due to the differences between the two legal frameworks, and therefore it would require different kinds of approaches to the research and to its implications.
Thanks to the literature review and the previous studies conducted to write the Master's thesis, I decided to focus exclusively on civil law, with specific reference to family law, and juvenile law, due to the possible important impact of cultural elements and factors within this field, as mentioned at the beginning of this paragraph.
In fact, the influence of culture on ideas, attitudes, and customs about marriage, divorce, child custody, inheritance, and other areas of family life makes it crucial when discussing family law. Understanding the cultural backdrop of a family can be crucial to resolving legal conflicts and making judgments fair and suitable for everyone involved.
A research area was "assembled" using the strategy of incrementally refining research questions and interpretative hypotheses already discussed, and whose limits increasingly became more defined as the study and the empirical work advanced. In this way, the "research field" was "constructed"

primarily from the cognitive demands that the research project aimed to address, rather than being just a pre-existing geographical location to which one had to "access".

The steps necessary to answer the research questions presented in the first chapter needed first of all to shed light on the concept of power relations and on the relationships between structure and agency within the juridical field, in order to make clear the theoretical lens used to drive the entire research.

This was primarily done via a systematic literature review, presented in chapter two, which made possible to focus the subsequent analysis bearing in mind the different layers that underlie my work and that create the *file rouge* through the thesis.

Once defined the legal framework of reference – the theory of legal field of Bourdieu and the importance of considering the courtroom as an institution – and according to the procedure inherent to qualitative research (Cardano, 2011), whereby the choice of the empirical context within which the work was carried out is to be placed primarily in relation to the research questions, the target population changed: rather than a mapping project of many different courtrooms, the focus changed and narrowed down to the only context of family law, in the courtroom of Milan. Such a decision was due to the importance of the courtroom of Milan in the Italian scenario, because of its dimensions, the diversification of the cases, and the multicultural composition of the city, the second biggest in Italy. In fact, Milan, located in northern Italy, presently boasts a population of over 1.3 million inhabitants. In the Italian context, its population displays significant diversity in terms of origin. Approximately 13% of its residents are non-communitarian citizens, and this percentage increases by an additional 3.5% if we also consider both undocumented and registered regular stayers who are not officially listed as residents (Ministero del Lavoro e Delle Politiche Sociali, 2022; Menonna and Blangiardo, 2014).

Among these, the ten most common countries of origin (Philippines, Egypt, China, Peru, Sri Lanka, Romania, Ecuador, Bangladesh, Ukraine, and Morocco) collectively constitute 75% of all foreign residents in the municipality. Notably, one in every five individuals is a minor, with over 60% of them born in Italy. Migration-related diversity is becoming increasingly obscured in these statistics due to the rising rate of naturalization. In just the past two years, approximately 13,000 foreigners acquired Italian citizenship in Milan.

Specifically, the civil sector, the criminal/judicial sector, the criminal/GUP office, and the administrative sector make up the framework that leads this very big court. The civil sector is divided into the Litigation area, which has 15 civil sections in addition to the Labour section, the Executions area, and the Bankruptcy area.

Qualitative research methodology appears proper for collecting data consisting of diverse individual perceptions and views. In fact, qualitative research relies on participants' self-perceptions and descriptions of their daily experiences, and it collects perspectives, views, and opinions to obtain knowledge of the complexity of the general context of the institution of the courtroom and of its relations. I had initially considered ethnography, i.e. the study of people in their natural context, or 'field', which imposes data collection methods that are able to capture social meanings and ordinary activities by requiring the researcher to participate directly in the context, if not actually in the activities. It is therefore mainly embodied in the activity of participant observation, i.e. the "principal technique for the study of social interaction, of the actions of individuals who are mutually present to one another" (Cardano, 2011, p.36), aimed at capturing social interaction at the moment of its occurrence and, above all, within the context in which it is habitually inscribed (Cardano, 2011). Besides and because of time constraints, through the use of ethnography as a research method it would have been complex to follow all the stages of a court case. Since the objective of my research was the viewpoint of lawyers and judges and not the evaluation of a case as a whole, I considered it more appropriate to exclude such a method.
Within the vast and variegated set of qualitative research methods and techniques (Cardano, 2011; Della Porta, Keating, 2020), my choice, in the end, focused on semi-structured interviews and an analysis of legal decisions in which the cultural aspect emerged, thus to give answers to research questions from the inside, trying to get as close as possible to the point of view of those who are part of that world (Cardano, 2011; Silverman, 2008) and in any case, given the heuristic irreducibility of the point of view of others to one's own, starting from the relationships and interactions with and between the social actors within the contexts of analysis. Through the interviews, I was able to grasp the meanings and reasoning inherent to my research objective, which would otherwise be difficult to evaluate. The objective is therefore not a comparative analysis anymore, but rather a specific study of judges and lawyers working in a single courtroom in Italy.

3.2.1 Design of the Research

When I first embarked on this research journey alongside fellow scholars and researchers, a formidable challenge loomed large – accessing the field of inquiry. I was met with skeptical and somewhat defiant expressions, as if they were saying, "You want to interview judges? Good luck".

To navigate this daunting terrain, I pondered various strategies, initially seeking out individuals who already had connections within this elusive realm. However, the outcomes proved rather underwhelming. It was then that I decided to directly approach potential interviewees, reaching out to them through their institutional email addresses, patiently awaiting their responses and willingness to engage in interviews. The quest for judges and lawyers willing to participate in the research was an arduous and often fruitless one. Recognizing the limited time availability of these legal experts for responding to my inquiries, it became evident that only those individuals deeply vested in the central theme of this research would be willing to partake in interviews. This reality introduced the potential for a selection bias into the study[31]. Moreover, being the subject of the research considered possibly sensitive, or at least bringing people to demonstrate a politically correct attitude, it was important to further consider the possibility of social desirability answers[32].

Besides the need to be transparent about selection criteria and methods, and to report any limitations or potential sources of bias in the findings, to make sure that their sample is representative of the population of interest, different data sources and methodologies needed to be employed. In this case, to ensure a form of methodological and results triangulation, two different data gathering and processing approaches were used, as previously mentioned. The aim was therefore to use different methods to study the treatment of cultural diversity in the judicial field: namely, the analysis of interviews with legal professionals and the discourse analysis of textual documents.

- Semi-structured interviews with the key actors
- Judicial decisions analysis

The empirical research took place in 2022 and 2023. The access to the field was difficult: after a time-consuming search of lawyers and judges available to be interviewed, 20 people were extensively interviewed about their own experiences with multicultural cases concerning family and juvenile law.

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[31] Participation or nonresponse bias, defined as a subtype of selection bias, is particularly problematic if the response is low since the research participants are less likely to be representative of the source population investigated. In general, selection bias is the systematic mistake that happens when the sample of participants or cases analyzed is not representative of the population of interest. Instead of choosing a random sample that is typical of the population, this might happen when researchers purposefully or inadvertently choose individuals or instances that are more likely to yield specific results or support their assumptions.

[32] Social desirability bias refers to the trend of presenting oneself and presenting one's answers in a way perceived as socially acceptable, but not always wholly reflective of reality. It usually tends to emerge on issues that participants find controversial or sensitive (Grimm 2010).

Semi-Structured Interviews: These interviews served as the primary means of gathering insights from key actors, specifically lawyers specialized in family and juvenile law of the IX section of the courtroom of Milan. The interviews provided valuable contextualization and comprehension of the significant issues entwined with cultural diversity and the law. Furthermore, they furnished a rich dataset for comparison with subsequent analyses of judges' perspectives. The semi-structured interviews played a pivotal role for several reasons. They allowed for an in-depth exploration of participants' personal viewpoints, fostering a more personal and direct exchange. Moreover, these interviews unveiled facets of the court's organizational life that would otherwise have remained elusive. They also facilitated access to divergent viewpoints and criticisms, integral to the analysis of both organizational and political aspects. Notably, actual cases were discussed during these interviews, both with lawyers and judges, to deter overly idealistic responses and mitigate the influence of social desirability bias. This very awareness, besides the participation bias, played a crucial role in defining the methodological approach to the research and, in fact, the limitation of the only use of semi-structured interviews was therefore excluded.
The interviews were meticulously recorded and transcribed, following the process that characterizes the transition from the interaction between interviewer and interviewee to the production of a text (Cardano, 2011), offering therefore a comprehensive account of the intricate interactions that unfolded during these sessions.
Each interview lasted approximately thirty minutes to one hour. The text transcribed in the present work, although inevitably reduced, thus attempts to account for the complexity of the interactions that took place during the interview, considering three main dimensions: the communicative modes adopted by the interviewer and interviewee; the interaction; and the contextual elements explicitly or implicitly recalled in the conversation (Cardano, 2011).

After having analyzed semi-structured interviews, the reasoning involved therefore judicial decision analysis. Documents play a decisive role in the construction of institutional, and therefore also legal, reality. One of the central theses of Ferraris's social ontology (2005; 2009) is that the entire institutional reality is based on documents, or rather on inscribed acts, i.e. acts recorded, 'fixed', in a material support. The document, in the construction of institutional (and legal) reality, can play an autonomous role concerning the legal act, i.e. the document, like the act, plays its own specific constitutive role in the production of legal reality (Silvi, 2020).

Judicial Decision Analysis**:** Recognizing the significance of analyzing judicial decisions in legal research, I embarked on an exploration of how courts have applied and interpreted the law in situations involving cultural diversity. This analysis, extending beyond the courtroom in Milan to

encompass the broader Italian landscape, entailed an examination of both judgments at the merit and legitimacy levels. To amass a substantial pool of decisions for analysis, I combed through major legal databases, utilizing pertinent keywords. Subsequently, I expanded the search to include leading legal journals. It is noteworthy that this analysis did not presuppose a predefined definition of culture but instead scrutinized judgments in which cultural impact was explicitly referenced, either by the court or the offender. This approach aimed to investigate how judges practically manage the concept of culture in their decisions, rather than delving into a theoretical exploration of the multifaceted concept of culture. The examination of legal documents, including judgments, provides a valuable means of grasping the personal points of view of lawyers and judges when dealing with cultural diversity in their cases. These documents served as tangible expressions of legal professionals' perspectives, shaped by the interplay of personal agency, organizational contexts, and the influence of internal legal culture. While the interviews allowed me to develop a reasoning more related to the individual's point of view and reasoning, the analysis of the decisions provided the basis for a different kind of analysis. In fact, since the judgment is a text produced for purposes other than those I sought, it allowed me to deepen a space of analysis concerning how categories are understood and interpreted in this context, such as the meaning of concepts of family, children, and childhood. Through critical discourse analysis, language is understood as a meaning of social construction, and it represents, reproduces, and creates social reality, identities, and knowledge (Silva Nino de Zepeda, 2022).

The analytical framework adopted encompassed a comprehensive examination of both interview texts and judgment texts. This process involved three fundamental stages: segmentation of empirical documentation, qualification of segments, and identification of relationships between the assigned conceptual and analytical attributes. These stages were executed using various analytical pathways, drawing upon diverse debates and schools of thought. The coding process was undertaken manually initially and later facilitated by the use of Nvivo software, aiding in the attribution of descriptive labels to the entire textual corpus. These labels summarized and reduced the texts into sequences while also breaking them down into processes, conversations, and themes. Subsequently, macro-categories emerged through a comparative and iterative review of materials, unveiling initial links and relationships between these categories.

The adoption of critical discourse analysis was a deliberate choice for this research, driven by its alignment with the multifaceted nature of the study. Scrutinizing the language and discourse embedded in judicial decisions through discourse analysis emerges as a compelling method to dissect and comprehend the judicial view and behavior. This approach delves into the profound

influence of language on the creation of meaning and its impact on societal behaviors, particularly within the realm of legal processes. It unravels how language can both reflect and reinforce power structures and societal norms, illuminating its role in shaping the interpretation and application of the law. In essence, this approach taps into the inherent characteristics of statutes (laws) and case law, offering an "emic" perspective that captures subjective meanings ascribed to various situations (Cohen, Manion & Morrison, 2011). It facilitates the study and description of 'culture' in terms of its internal components and functioning. Moreover, it was useful to engage in a critical analysis of diverse discourses, recognizing them as both instruments of power and manifestations of power dynamics (Cohen, Manion & Morrison, 2011). Essentially, it poses essential questions about the operations of power and their resultant effects on actions and interactions.

In this context, the judicial decision, akin to the law itself, assumes the character of a linguistic act that not only binds but also ushers in transformative change through enunciation. Viewing the court's ruling through the prism of the core conceptual categories advanced by the philosophy of language, one can discern it as a performative statement, signifying that saying something doesn't merely describe an action; it effectively performs that action. In this regard, the court's ruling and regulations do not merely correspond to verbal or procedural actions; they encompass both dimensions. Unquestionably, the judicial subsystem, an integral facet of the legal system, emerges as a potent analytical tool. The judicial decision, driven by the imperative of motivation, emerges from decisions deeply entrenched in the foundations of the law (Barra, 2015). From a functional standpoint, Luhmann (1986) emphasizes the persuasive capacity of argumentation in decision-making processes. Arguments represent unique forms of communication that articulate reasons and contribute to mitigating the inherent uncertainty surrounding decision-making. Consequently, they hold sway within the judicial system, effectively serving as tools through which the system persuades itself of the validity of its judgments. Adopting a discourse analysis perspective in this context, it becomes evident that actors present arguments that the court interprets, giving rise to a meaningful interaction infused with specific insights. The analysis of language employed in judicial opinions unveils discernible patterns of argumentation, framing, and reasoning. Moreover, it provides a platform to investigate the underlying beliefs and assumptions that underpin judicial judgments. This form of analysis enhances our understanding of how broader societal, cultural, and political forces exert influence on legal decision-making, shedding light on the intricate connections between the legal system and other power structures and sources of inequality.

Crucially, this approach underscores the pivotal role of language in the realm of law. It acknowledges that law and its processes and institutions are inherently shaped and perpetuated through the use of written and spoken words (Banakar & Travers, 2005).
This stands in contrast to the traditional ideology of legal positivism, which views legal language as an internally constructed system of legal meanings and values, deployed as a neutral instrument to realize the intentions of the law. The positivist ideal envisions legal decision-making as a neutral, objective, and dispassionate endeavor focused on ascertaining and applying legal content to factual scenarios. However, the inherent linguistic indeterminacy within the law, stemming from the open-ended nature of legal texts and the fluid, context-dependent character of language, challenges this objective and somewhat mechanistic portrayal of legal decision-making (Banakar & Travers, 2005).

In summary, the research methodology was meticulously crafted, with research questions framed through extensive engagement with core themes and a comprehensive literature review. Subsequently, a methodological approach combining semi-structured interviews and judgments analysis was chosen to ensure robustness and reliability. The selection criteria for the interviews were defined, and a persistent search for access to the field ensued. Despite the relatively small sample size, driven by the limited number of judges in the specific domain of family law in the Milan courtroom, this dimension was not a hindrance, particularly given the parallel analysis of judicial decisions. In this case, however, the framework of reference comprehends the whole Italian scenario, and not only the courtroom of Milan, both with ordinary and Cassation judgments, in order to provide a larger number of decisions to be combined with the empirical research analysis. A total of 37 judgments were analyzed and the collection first started through the main legal databases, searched using keywords of interest, and subsequently through the main legal journals. In this case, there is not a priori definition of culture used in this study (Ruggiu, 2012; Pannia, 2017). Instead, it gathers and analyses all instances in which the cultural impact is stated in the judgment, either by the court or the offender. This has the aim to investigate how judges manage the category of culture in practice rather than performing a theoretical analysis of the multi-layered concept of culture, previously presented in this work. The study's focus lies not in making prevalence or incidence claims but rather in offering a nuanced qualitative exploration of the research's central concerns.

3.3 Ethical Issues and Confidentiality

Conducting the research involved two key components: ethical considerations and secrecy. Confidentiality refers to safeguarding the privacy and personal data of study participants, whereas ethics is concerned with the standards of conduct that govern research. Both should be seriously taken into account by researchers in order to maintain the accountability of the study process. As with any research study, this work raised some ethical considerations. Judges and lawyers are required by law to safeguard client confidentiality and participating in research could jeopardize this duty. Therefore, before participants consent to participate, it was necessary to make sure they were fully aware of the study's goals and their rights. The people involved in the study were provided with information about the general purpose of the study, with the subjects to be covered, and how the data collected will be used, making sure that nothing was gained from people not adequately prepared for what the interview required of them, or the topics covered.

Moreover, judges and lawyers have access to confidential material, and it is their ethical responsibility to uphold secrecy. Therefore, necessary precautions were taken to guarantee that the identity of participants and any sensitive information they disclose is kept secure in order to maintain confidentiality. It was necessary to ensure that the data collected from judges and lawyers are anonymized before any publication or sharing with others. This will ensure that the participants' identities are protected and that the research findings do not compromise the participants' professional obligations to maintain confidentiality. Therefore, the participants were informed that their anonymity would be maintained, and they were also apprised that their responses and personal data were kept strictly confidential as well as how data will be used for the project. Therefore, it seems appropriate to specify how, in order to preserve the anonymity of the persons and to interpose a necessary distance between analysis and theoretical abstraction, I have used acronyms in the discussion. In the interview excerpts, therefore, the acronyms identifying the professional role held and gender will be given in brackets.

The non-neutrality of researchers' and researchers' gaze has long been stressed by feminist and post-colonial criticism, which emphasizes the power structures hidden in the act of looking, which should be viewed as a genuinely multimodal operation rather than a just visual one. Indeed, it is important to acknowledge the quality of the knowledge produced, which cannot be disconnected from the social 'position' held by the knowing subject. By highlighting the need to make explicit that very social position that the researcher inevitably holds as a speaking subject and, before that, as an observer, the question goes far beyond the example of "taking a position" within the hierarchies of power that permeate the social worlds raised by Becker (1967).

The explicitation of the researcher's social position, namely that of an Italian woman researcher with a background in anthropological studies, who unavoidably participates in power dynamics between disciplines is, therefore, the feature of research that is relevant from an epistemological standpoint.

These points seek to appropriately draw attention to the necessary partiality of the knowledge generated, influenced by identity politics that shape the researcher's personal perspective and the representations created.

Finally, another important point that concerns ethical issues refers to veracity. In fact,

> […] the ethical debate lies in balancing the values of veracity and justice. With fields changing almost constantly, and with the importance of perspective to understanding the truth claims of research, it is important that researchers identify their perspective on their field of study, for the benefit of readers who do not know their work. Explicit recognition of perspective remains the best way of maintaining the integrity of research and supporting an area of academic life still tolerant of relativistic values (Boon, 2005, p. 275).

In fact, since different disciplines of study are constantly changing presents a significant obstacle for scholars in this situation. The dynamic nature of knowledge and understanding in various domains emphasizes the value of perspective in evaluating the veracity of claims made by research. Here, perspective is used to describe the researcher's point of view or personal biases, which invariably affect how they present and interpret their findings. The need to achieve a balance between truthfulness and fairness in research is at the center of the ethical discussion presented here. In order to do this, it is essential to admit one's own position in order to provide context and openness, which will ultimately improve the work's integrity.
Therefore, in conclusion, it is important to stress the responsibility to maintain honesty, integrity, and transparency in the work and to report the findings accurately and truthfully, always being aware of the personal perspective adopted. Only by adhering to ethical standards and maintaining veracity in the research, it is possible to ensure the integrity of the research process and the credibility of the findings.

3.4 Limitations and Implications of the Study

I consider it essential to enter into the merits of the problematic aspects that emerged in the course of the research and, in particular, during the fieldwork, since they played an extremely significant

role in the outcomes of the research itself and it is, therefore, crucial to give a restitution and a methodological in-depth examination of them, also and above all in consideration of the importance that reflexivity assumes in qualitative research, in order to be able to assess the reliability of the work itself (Cardano, 2001). Moreover, it is always through reflexivity that the reader is given the opportunity to grasp, at least partially, the background of the research work, also giving back the dimension of research as a process, as a concrete becoming, the result of choices, negotiations, reorientations and continuous misunderstandings that, individually and together, lead to the elaboration of that precise and unique final product.

It is important to stress some limitations that inevitably occurred in the carrying out of this research, in order to better clarify what to bear in mind when considering future developments and the possible use of the data collected and of the concluding considerations and analysis.

First of all, and quite trivially, time. Time constraints negatively affected the research, due to the long time spent to get access to the field and, of course, due to the need to perfectly study theoretical implications before getting ready for the interviews. Moreover, restrictions caused by Covid-19 also had an impact in time management, since limited quite seriously the chance to start the fieldwork at an early stage of the Ph.D. and led inevitably to postpone such phase of the work. Then, as previously mentioned, the sample here considered is small, due to difficulties during the recruitment phase, and to the limited number of judges working in the Family Section in the Courtroom of Milan. A restriction on the number of respondents to be interviewed was a necessary consequence of the methodological choice that supported an open instrument. Although having considered also case-law analysis, to triangulate the data and to better contextualize the general context, it is important to consider such limits when reading the results of the study.

It is important to keep in mind that the viewpoint chosen is based on the actors' worldview, or on a reality filtered via the perceptions, attitudes, and representations of those interviewed. It should also always be borne in mind that the description being examined is one that has been filtered through personal perceptions, which in turn are a result of experiences and professional affiliations throughout one's career as well as specific cultural and political orientations.
The limited access to sensitive data was of course another problem to take into consideration. In fact, quite often, when talking with lawyers and judges, the concern not to reveal sensitive data of their clients led to a more general and therefore not precise contextualization of the daily practice investigated, not allowing them to perfectly flag what possibly considered as problematic issues.

Because they only observe and take part in one aspect of the process, and frequently are unaware of what is happening elsewhere, the privileged witnesses only provide a partial reconstruction of reality. A key beginning point may result from such an approach, but one cannot assert that it exhausts the investigation.

Overall, the research aims to contribute significantly to the sociological analysis of managing cultural diversity within courtrooms in Italy, addressing a theme that remains underdeveloped within the civil sphere, particularly concerning family and juvenile law in Italy.
This study underscores the lacuna in existing research and seeks to fill it by examining the dynamics of cultural diversity within legal proceedings. In addition to emphasizing the lens of legal culture as a foundational aspect, the research places importance on considering the organizational context of courts. It highlights the necessity of not solely relying on a culturalist approach but also taking into account the broader organizational dynamics within which legal decisions are made. By integrating these perspectives, the research intends to offer a more comprehensive understanding of how cultural diversity is managed and perceived within the Italian legal system.

3.5 Conclusions

In conclusion, a thorough delineation of the epistemological and methodological foundations is essential to this research. Through a deliberate methodological approach blending semi-structured interviews and critical discourse analysis of judicial decisions, this research seeks to unearth the nuanced ways in which legal actors navigate cultural diversity within family and juvenile law. Despite inherent challenges such as limited access to the field and time constraints exacerbated by external factors like the COVID-19 pandemic, this study endeavors to offer valuable insights into the lived realities of legal practitioners and the societal forces shaping legal discourse.
It is crucial to acknowledge the limitations inherent in this research, including the sample size and restricted access to sensitive data, which inevitably shape the scope and depth of our analysis. Nonetheless, by embracing reflexivity and acknowledging the subjectivity inherent in qualitative research, this study strives to contribute meaningfully to the ongoing dialogue between social scientists and legal practitioners, enriching the understanding of how cultural diversity intersects with the practice of law.

4. Cultural Dimensions in Legal Practice: Insights from Semi-Structured Interviews with Lawyers and Judges in Milan

This chapter presents the outcomes of the research on sociocultural diversity and its impact on judicial decision-making within the Milan courtroom.
The empirical data were derived from semi-structured interviews conducted between 2021 and 2023, that explored four key aspects of judges' and lawyers' experiences with cultural diversity: (1) the definition of culture that surfaces, (2) the legal domains where they perceive cultural diversity as challenging, (3) the techniques and tools employed in their daily practice to address this diversity, and (4) the potential additional tools that could enhance conditions for considering cultural diversity in the pursuit of justice.

The chapter unfolds as follows: after briefly summarizing the research questions and methodology, participant demographics are presented to provide a contextual backdrop for the ensuing responses. In the subsequent section, the main themes derived from the interviews are outlined, emphasizing connections with existing literature and theoretical concepts previously outlined on the subject. The participants' testimonies revealed a nuanced understanding of 'culture,' not explicitly articulated in their own words but discerned through the analysis of emerging issues.
Notably, it highlights an understanding of culture among lawyers and judges that transcends a stark distinction between 'our' and 'their' culture, at least at first sight. Instead, the focus is on notions of culture directly tied to the legal and organizational context within which judges and lawyers operate.
Three operationalized notions or dimensions are identified: 'culture as communication,' 'culture as context,' and 'culture as norms', revaluating the practices and attitudes gleaned from judges' testimonies in the context of the concept of legal culture.

Analyzing data is a crucial and intricate stage in the research process, and it is not simply a 'technical step'. As previously discussed in the thesis, data collection, analysis, and interpretation are tightly interwoven and do not unfold as distinct, sequential phases; instead, they form a mutually dependent relationship.
As the creation of meanings is a dynamic process involving individuals in their interactions with others, the empirical material (the data) is examined not solely to identify the 'expressed meanings' (the meanings participants explicitly attribute to their own actions) but also to investigate the existence and characteristics of the interaction processes that gave rise to those meanings, considering the relationship between those subjectivities and the contextual features in which they

manifest in behavior. Thus, the investigation focuses on two aspects: firstly, the specific interest in the processes of meaning construction rather than meanings alone; secondly, the recognition that analyzing construction processes requires acknowledging the interplay between the subjective dimension and the contexts in which individuals articulate their behaviour.

Given the importance of the context of reference where lawyers and judges work daily and where they shape their own legal culture and behaviours, it is first necessary to present the courtroom of Milan and its structure and functioning.
The Courtroom of Milan operates as a complex and multifaceted institution, with a structure headed by the Court President, who oversees the functioning of the office, undertaking organizational responsibilities and other legally assigned duties. Engaging in the appropriate judicial activities, the President performs functions designated by law within the functional competence of the President of the Court of First Instance, with support from the Presidents of Chambers.

The courtroom is organized into four main sectors: civil, criminal/trial, criminal/GUP office, and administrative. Each sector further delineates into specific areas, shaping the operational landscape of the courtroom. Notably, the civil sector encompasses Controversies (comprising 15 civil sections and a Labor section), Executions, and Business Crisis and Overindebtedness areas.
In parallel, the criminal/trial sector encompasses the Court of Appeal, Trial (divided into 11 penal sections), Court of Assizes, and Autonomous Section for Preventive Measures.
Each section, whether civil or criminal, is overseen by a Section President and typically equipped with a dedicated registry responsible for the filing and registration of voluntary jurisdiction procedures.
For what concerns the Juvenile Court, instead, in the realm of civil proceedings, the decision-making process follows a collaborative approach, involving both regular and honorary judges in equal participation. Notably, for civil cases, a unique arrangement is adopted, wherein two honorary judges—one male and one female—work alongside the two regular judges, a gender-specific distinction not applied to the regular judges. Contrastingly, the configuration differs in criminal matters. The dynamics vary based on the stage of the legal process. For the swift validation of arrests, a single judge is assigned, a decision motivated by the exigencies of the procedure's tight timeframe. The preliminary hearing acknowledged as the crux of criminal intervention, adopts a panel format, featuring one judge and two honorary judges. The subsequent criminal trial assembles a larger panel of four judges. This nuanced staffing approach underscores the court's adaptability to the distinctive demands of civil and criminal proceedings.

This organizational framework sets the stage for the semi-structured interviews conducted with judges and lawyers and it is for sure a specific and particular field of research, as it easy to understand from the words of a family lawyer interviewed:

> Now look, in Milan, in my opinion, we are quite fortunate. We have a specialized section, and we have wonderful judges who unfortunately have gone elsewhere, in the sense of being transferred, and we felt a bit orphaned, but we certainly have judges who collaborate a lot with lawyers from one point of view, and secondly, they are passionate about their field. Therefore, they are interested in delving into various issues themselves. Unfortunately, if we turn the corner just outside the Court of Appeal in Milan, it's not the same, also because, to state the obvious, there is a judge who finishes dealing with a construction contract and moves on to a separation (LF-2).

Therefore, the interviews took place within the context of family law, where Sections 8 and 9 are specifically dedicated to family matters, encompassing issues such as family law rights, protections, support administration, compulsory medical treatment, and filiation actions. In these sections, 14 judges collectively contribute to the administration of justice, while the personnel structure of the Juvenile Court is composed of 18 Regular Judges and 72 Honorary Judges.

4.1 The Research Sample: Purpose and Methodology

As outlined in the previous chapter, in the framework of this qualitative study, semi-structured interviews are a purposeful and important means that is primarily intended to clarify the complex intersections of culture in the legal domain. In this way, judges and lawyers have a dynamic forum to discuss their ideas, experiences, and practises regarding the complex aspects of culture in their respective fields of practise through these interviews. In order to provide participants the chance to voice their opinions while guaranteeing a methodical investigation of the research issues, the semi-structured format strikes a compromise between flexibility and structure.

Due to the intricacy of the study questions, the semi-structured format of the interviews permits a thorough analysis of the subtle facets. Engaging participants in deep dives into their professional practises and thought processes around culture can yield rich, context-specific insights that may be difficult to extract from more rigorous data collection techniques.

Moreover, the adaptability of semi-structured interviews is highly beneficial in revealing unforeseen motifs and fresh perspectives that may emerge spontaneously throughout the discussions. This flexibility is especially important when examining how legal practitioners take into account the

cultural backgrounds of their clients in particular instances, how they make decisions about consulting experts, and what standards they use to make such decisions.

The use of NVivo software to help the thematic analysis that followed gives the research an additional level of methodological rigor, facilitating the methodical arrangement and investigation of the extensive qualitative dataset produced by the interviews. This enabled the uncovering of broad patterns, recurring themes, and minor differences by using thematic analysis, which goes beyond simply describing the responses of the participants, guaranteeing a thorough investigation and making it easier to comprehend the various ways that judges and lawyers interact with and interpret the cultural aspect within the legal system.

Layers of significance for the study inquiry are revealed by the demographic composition of our participant pool, which consists of 13 lawyers and 8 judges from the Milan courtroom's family and juvenile division. The gender distribution of the judicial representatives reveals that there are primarily 6 women and 2 men, whereas the lawyer's cohort is made up of 12 women and 1 male professional[33]. The selection of experts from a wide range of backgrounds—including prior positions in immigration, family and juvenile law, and criminal law—confirms the goal of capturing a wide range of viewpoints and experiences.

However, the fact that the sample size is quite small raises legitimate questions about potential bias. This concern led to a cautious approach to data interpretation, which was further exacerbated by the impact of social desirability bias. In response, it was decided to add a triangulation of data sources to the thematic analysis of interviews and to thoroughly review judicial decisions, in the next chapter, to strengthen the validity of findings and conclusions.

Recognizing the constraints imposed by the sample size is crucial since the subtleties we find are limited by the participants' specificity. To overcome these constraints, it was chosen a strategy that takes into account the possible biases present in the makeup of our sample while also aiming to offer a more thorough and nuanced picture of the intricate interactions among culture, professional backgrounds, and legal decision-making in the Milanese family court context.

It was decided to use different acronyms to preserve the participant's privacy and confidentiality as well as to give gender and role-specific identification. For this reason, the composition of the actors involved in the research is outlined as follows: acronyms such as JF-1 (for a female judge in family matters), JM-2 (for a male judge in family matters), JFJ-3 (for a female judge in juvenile matters), JMJ-4 (for a male judge in juvenile matters), and so on for judges serving in the family section of

[33] Based on data from the Ministry of Justice regarding the annual personnel report for magistrates, there is a higher number of female magistrates compared to males. The 2022 data indicates 5,314 female magistrates compared to 4,343 male magistrates. As for lawyers, according to the 2022 Censis report, the gender distribution slightly favors males, accounting for 52.3% of the total. In absolute numbers, there are 126,000 male lawyers and 115,000 female lawyers.

the Milan courtroom. Similarly, abbreviations like LF-1 (designating a female lawyer in family affairs) and LM-2 (designating a male lawyer in family matters) designate lawyers specializing in family and juvenile law in Milan.

This multifaceted acronym structure protects the confidentiality of our participants, offers a nuanced portrayal of their gender and professional responsibilities, and enables a thorough examination of the themes and patterns found in our qualitative data. The next sections' consistent use of these acronyms protects participant privacy and allows for a thorough examination of how professional responsibilities, gender, and cultural factors intersect in the legal field.

4.2 Themes

The goal of the semi-structured interview thematic analysis was to identify and categorise major themes related to the research questions. The topics that emerged covered a broad investigation into how legal practitioners—judges and lawyers with a focus on family and juvenile cases in Milan—perceive and use culture.

A comprehensive understanding of the complex concept of "culture" and its complicated integration into legal decision-making processes is provided by the theme analysis of the semi-structured interviews conducted. The first major issue, "Utilisation of Culture in Legal Decision-Making" explores the varied interpretations of "culture" that legal experts have to offer.

It is clear from insights that judges and lawyers deal with a variety of cultural interpretations, from more general ethnic and socioeconomic impacts to more conventional social norms and conventions.

The in-depth examination of the issue "Expert Consultation and Decision-Making" goes into detail about the complex procedure by which legal professionals choose to consult or not with cultural specialists and experts, defining which kinds of professionality are taken into consideration within the courtroom. The theme analysis clarifies the complex factors and rationales guiding this choice, as well as institutional limits that emerged. When dealing with cases that involve cultural difficulties, legal practitioners exhibit an awareness of their own limitations as well as the potential influence of cultural elements on case results. The choice to involve cultural experts is a calculated action motivated by the need to have a deeper comprehension of the cultural subtleties involved, although it is often strongly influenced by constraints related to the institutional and procedural context in which individuals find themselves.

Participants report that the perceived importance of cultural factors in a particular instance often determines whether or not to seek expert consultation, with potential biases or misconceptions influencing their decisions. Certain practitioners emphasise the necessity of possessing specialized expertise when cultural variables and legal complexities collide. This topic also emphasises how important it is to take an interdisciplinary and collaborative approach, as lawyers and judges recognise the benefits of utilising the knowledge of experts who specialize in cultural nuances. All things considered, the analysis of "Expert Consultation and Decision-Making" sheds light on the deliberate and calculated steps legal professionals take to decide whether or not to include cultural experts in their decision-making processes.

The final main issue, "Tools for Cultural Comprehension", explores the practical approaches and techniques that the interviewees use to improve their comprehension and assessment of the cultural component in the legal field. This subject emphasizes how judges and lawyers in the Milan courtroom understand how important it is to have the right tools to handle the complexity that comes with handling cases that are sensitive to cultural differences. Thematic analysis revealed insights into a wide range of strategies, from the application of cross-cultural communication tools to cultural sensitivity training initiatives.

Participants demonstrate a diligent effort to keep up with changing cultural dynamics, highlighting the significance of lifelong learning and remaining aware of cultural quirks that are pertinent to their line of work. Adopting assessment instruments and legal frameworks that are culturally appropriate is seen by some practitioners as essential to creating a more just and inclusive legal system. The theme also highlights the cooperative efforts made by legal teams to exchange knowledge and experiences, building a body of collective understanding for cultural understanding.

4.3 Utilisation of Culture in Legal Decision-Making

The primary objective of this analysis was to identify and categorize major themes related to how legal practitioners, specializing in family and juvenile cases, perceive and incorporate cultural considerations within their professional realms. The multifaceted nature of the concept of "culture" and its intricate integration into the decision-making processes of legal experts are thoroughly examined. As we embark on this thematic journey, the chapter unfolds by exploring the diverse interpretations of "culture" provided by judges and lawyers, shedding light on the intricate ways in which cultural factors shape their decisions. From encompassing broader ethnic and socioeconomic impacts to navigating through traditional social norms and conventions, the insights gleaned from

this theme analysis offer a comprehensive understanding of the nuanced role of culture in the legal landscape of the courtroom of Milan.

4.3.1 Cultural Dimension in Legal Practice

As discussed in the initial chapter of this work, the concept of culture can be approached and applied in various ways. Despite the challenge of offering a definitive definition of culture, the decision in this work was made to align with the perspective of anthropologist Clifford Geertz (1973), whose viewpoint characterizes culture as a network of meanings that individuals employ to interpret the significance of their actions. The social aspect of this network can be seen as a horizon comprising shared narrative descriptions that are subject to debate and contention.

This decision, however, was the outcome of a specific contemplation on these themes, which are essential for initially delving into the core subject of this work. As revealed through the semi-structured interviews, the perspectives of lawyers and judges differ as anticipated, leading to a reflection of the definition of culture provided by the interviewees.
When judges and lawyers were explicitly asked what the term culture meant to them, a number of issues naturally arose. However, a notable pattern unfolded as participants engaged with questions probing the fundamental meaning of culture. Surprisingly, the question delving into their perspectives on the very essence and meaning of culture was consistently met with a degree of avoidance among the interviewees, both with lawyers and judges. This evasive tendency manifested as a recurring phenomenon, suggesting a reluctance or perhaps a complexity associated with articulating their conceptualizations of culture. The probing nature of the question sought to unravel the intricate layers of understanding that legal practitioners bring to the term "culture" within their professional contexts. This avoidance prompts a deeper reflection on the potential sensitivities or uncertainties inherent in addressing the foundational aspects of cultural considerations within the legal landscape. Beyond the consistent avoidance observed in response to inquiries about the very meaning of culture, it is crucial to note the diverse range of responses elicited from other interviewees. While a subset of participants exhibited hesitancy or reluctance in directly engaging with the question, few of them provided rich and varied insights into their conceptualizations of culture. These respondents navigated the query with a spectrum of perspectives, offering unique viewpoints on how they interpret and integrate cultural considerations within the legal sphere.

The judges' responses to the question regarding the definition and understanding of culture reveal both commonalities and distinctions in their perspectives. Across the interviews, there is a shared recognition that culture extends beyond mere ethnic or national boundaries. Instead, it encompasses a spectrum of factors such as social norms, customs, organizational cultures, upbringing, education, and social conventions.

> When I talk about cultural factors, I mean the background of education, upbringing, social conventions within which a specific individual grows (JF-4).

This broadened definition suggests a nuanced comprehension of cultural dynamics within the legal context. In analyzing the responses to the question about the definition and understanding of culture among lawyers, a recurring theme emerges, emphasizing a broad and multifaceted perspective on culture. Respondents generally acknowledge that culture extends beyond traditional or ethnic aspects, encompassing psychological, familial, and support structures and there is a general consensus on the importance of incorporating diverse perspectives into legal considerations. Notably, there is a recognition that culture significantly influences perceptions of authority, impacting legal decisions, particularly in matters related to family and parental responsibility. There are of course nuances in individual interpretations and differences emerge in the emphasis placed on specific aspects of culture: some interviewees highlight the importance of cultural diversity, stressing that effective parenting exists across various cultural backgrounds and pointing out differences in cultural approaches to family relationships, drawing examples from Japanese and Maghrebian cultures, or other specific cultural contexts in general terms such as North Africa, Bangladesh, and Pakistan, indicating a diverse range of cultural backgrounds considered.
The result is that culture is sometimes seen as a personal and collective baggage of experiences that shape interpretations, or as a normative framework guiding legal actions, intertwining it with criteria of right and wrong.
However, looking at the meaning of culture proposed in the course of the interviews, and not only at the specific answer to the question 'What do you mean by culture', a less nuanced and complex approach emerges, but rather a simple use of culture as a geographical origin and, therefore, a more reified vision. Despite the wide range of acknowledged characteristics and definitions associated with culture, when addressing other topics, lawyers and judges primarily employed the term "culture" to refer to idealized attributes associated with cultures of specific national groups, such as the ones mentioned above. The creation of cultures by judges and lawyers involves envisioning both the "cultural other" and the "cultural normal," reflecting essentializing logics, commonly

employing a concept of culture as a static category and unveiling normative assumptions about defining characteristics attributed to specific national cultures or more general geographical origins. In general, it has emerged that when lawyers and judges refer to culture in describing practices, when they recount cases they have handled, the concept of culture takes on a more reified and simplified character.

> This very aspect emerged through the interviews in several moments: The South American doesn't do anything for nothing. The South American has this thing here because it's very linked to the economic sphere, fundamentally. There's a lot to say, there's a lot to keep connected to the children because children are a tool to get money from the other, fundamentally. […] The Nordic perspective in economic terms, using a Nordic term, split the Nordic tendency in half, is to say okay, it's fine, it costs 1000, 500-500, there's no perspective of saying I don't work, I can't do it, I don't make enough to do it, let's do 700-300, just to say, generally (LF-4).

> The problem is that we're talking about parents normally of North African ethnicity, especially these, because they are the ones most resistant from a point of view that are currently valid in our country, not so much in accepting cultural models as well as learning our language. The experience I have, which has also been confirmed in the criminal context, is that the mothers, not the fathers because the fathers work, but the mothers do not know Italian and do not want to know it, they do not learn it despite many years of living in Italy. [...] these mothers do not know Italian and do not even want to understand it, I don't know if they don't want to or if they are not in a position to learn it [...] with Pakistan, I encountered another problem which is less strong compared to North Africa, which is precisely the outright rejection of the Western model [...] So, conditioning from the family, from the parental couple regarding their origins, their culture, their parental model is common. It's not their fault, of course, they are the product of the education they received and brought here [...] (JF-3).

These two interview excerpts effectively illustrate the prevailing trend observed in almost all the interviews, where interviewees demonstrate this attitude without a critical awareness of it.
This emerging pattern consistently informs the interviews conducted, highlighting a fundamental question regarding cultural diversity in legal contexts. Since this issue was not critically analyzed or acknowledged by the interviewees, it was subsequently examined in greater detail through textual analysis of the judgments, as discussed in the following chapter.

Generally speaking, what emerges through the interviews is the lack of standardized usage of the term "culture" within the legal realm, suggesting a potential absence of a shared code or institutionalized consideration of cultural factors, as well summarised by a judge:

> We do not have a standardised use of the term culture. In fact, I think there really is no shared code. It's not a factor, I'm afraid, that is considered in an institutional way, so I can tell you what my perception is (JM-1).

This appears to confirm the "polyvocal" character of the term "culture" within the practices of legal professionals, where its meaning is highly dependent on the discursive context in which it is employed.

Overall, while there is a shared understanding of culture as a multifaceted influence, the nuances in emphasis and the recognition of the absence of a standardized approach highlight the complexity of integrating cultural factors into legal considerations.

The semi-structured interviews uncovered diverse responses, reflecting a nuanced understanding of culture within the legal profession, although participants exhibited both reluctance and willingness to engage with the fundamental meaning of culture, highlighting potential sensitivities and uncertainties in addressing cultural considerations within the legal landscape.

However, the lack of standardized usage of the term "culture" suggests a potential absence of a shared code or institutionalized consideration of cultural factors. This leaves room for personal interpretations that often refer to idealized attributes associated with specific national groups, thus revealing essentializing logics and normative assumptions about defining characteristics attributed to specific national cultures.

The focus now shifts to the concept of legal culture, particularly internal legal culture, as a pivotal lens for understanding how lawyers and judges navigate the intersections of law and culture. The subsequent exploration aims to unravel how legal professionals operationalize the concept of 'foreign' culture within the familiar context of their legal culture.

4.3.2 Culture and Legal Decision-Making: Nuances and Dynamics in Practice

In the realm of legal inquiry, the concept of legal culture, with a specific focus on internal legal culture, emerges as a pivotal lens for comprehending how lawyers and judges navigate the intricate intersections of law and culture. The attempt is here to unravel the nuanced ways in which culture is employed by legal professionals, after having outlined the definitions that materialize through their perspectives. By delving into interviews, it was possible to discern how lawyers and judges operationalize the concept of 'foreign' culture along dimensions that align with their own legal

culture and, therefore, with something they are familiar with, considering that although law is inherently cultural, the categories and practices of law rely on the perceived universality and objectivity of a particular legal framework (Geertz, 1983).
The inquiries undertaken here center on the mechanisms through which legal practitioners assimilate, interpret, and process foreign cultural elements within the framework of their familiar legal context.

According to the interviews, only a few lawyers and judges recognize and provide insights into how Italian legal culture, as an integral part of internal legal culture, influences the assessment of parental capacity in family law cases. Through an interview with a layer, for example, emerges how "parental capacity is often judged through the lens of the Italian culture; therefore, it is seen through the lens of the judge, who has the Italian culture" (LF-12) underscoring the significant role that the internal legal culture plays in shaping the perspectives and decisions of legal professionals, particularly judges, in family law matters. This observation raises critical questions about the awareness and acknowledgment of one's own cultural context in legal decision-making, highlighting the potential oversight in recognizing the influence of our cultural backgrounds while scrutinizing and interpreting the cultural elements of others.
Despite and because the interviewee provided only a few references to this crucial issue, further thoughts emerged on the possible meanings and understanding of the term culture, related to the concept of legal culture, that are going to guide further analysis of the research questions underlying this work.
Upon closer examination of the entirety of the testimonies of lawyers and judges, a more nuanced perspective, notably absent from the prevailing portrayal of legal experts in academic debates, on culture and its assessment emerges. In fact, from the analysis of the interviews, it emerged that it is possible to delineate at least three dimensions of culture that are closely tied to the organization of the judicial decision-making process, reflecting the legal and organizational culture in which they function (Vetters, Foblets 2016). Although some references to a specific notion of culture make a clear distinction between 'our' and 'their' culture (in relation to immigrants), for example, “There is this resistance, I repeat, from families not only in North Africa, even say Bangladesh, Pakistan, those areas” (JF-3), other responses tend to focus on notions of culture that are more directly related to the legal and organizational context in which judges operate and are therefore analysed in depth.

> I also realise in so many situations the linguistic difficulties these parents face. I recently came across a case of declaration of adoptability of a foreign child, in which everything had been verified, the Court of Milan had verified the child's state of abandonment as subsisting,

> not having investigated the extended family that could take care of the child, and sustaining that the grandmother had not been available to act as a vicar with respect to the mother, who had been declared deprived. You understand that a native Spanish speaker, even one with a cultural level of education, has no difficulty in answering the question: are you willing to have a vicarious function vis-à-vis your granddaughter? All these aspects are almost never addressed. Even judges...have great difficulty in having translators at hearings, not just general translators, because already requiring the presence of a translator is almost a bit annoying and burdensome, but a translator trained in that language. It happened to me that a translator of ... Middle Eastern nationality was appointed to translate into English in a proceeding in which my client was a native African who had grown up in the United States (LF-2).

As it is possible to understand from this quotation, a thorough examination of the concept of culture is incomplete without a concurrent analysis of the cognitive mechanisms through which this process of culturalization unfolds. In this sense, it is crucial to consider the legal culture and the context of the analytical environment to avoid overlooking the simultaneous construction of the "self" and the "other".

The first dimension to take into consideration revolves around communication, where lawyers and judges observe cultural diversity influencing direct exchanges in the courtroom with claimants or defendants from diverse sociocultural backgrounds. In such scenarios, communication is recognized as a pivotal aspect of culture.

The second dimension is linked to the challenges of acquiring empirical evidence in situations requiring knowledge of the sociocultural context of the involved parties and it is quite frequent that it is strictly related to the first dimension outlined above. Here, culture transforms into context, encompassing various elements ranging from linguistic characteristics to political events, religious practices, and kinship systems: “I would like to say that the word 'family' has a completely different meaning, but so does the concept of time, the concept of officialdom, the concept of truthfulness or certificate...” (LM-7).

> It happened to me with a case of a Moldavian family... the court did not know who to appoint because they did not have cultural mediators. Cultural mediators, not translators...and then at the end practically it was decided to appoint a person who then played the role of translator, but also of cultural mediator, because she worked in a cooperative that does this work here, that is cultural mediation, which provides assistance to migrants and then prepares the migrants... does training and reception activities, therefore also explaining certain rules that apply in our country and deliver some expert analysis. Here it was what allowed us to overcome an impasse ... to talk to this person and first of all to be able to explain the questions that were being asked and with the translation, this translator

> also managed to pass, let's say, a message to the person involved, who was the mother, to pass a message of culture […] (LF-11).

> We appealed, the Court of Appeal ordered a court-appointed expert witness precisely because it had not been done in the first instance, but certainly of this kind, I wanted to appoint a consultant of the same nationality as the mother and grandmother and the minor, so that he could act as a mediator between the various figures, also taking into account the cultural aspect and the linguistic aspect that, as I told you before, had not been taken into account enough in this case (LF-2).

These quotes effectively illustrate how, in these specific contexts, culture is readily associated with the communication process and, in some part, with the context of reference. From the standpoint of the lawyers, there is a discernible separation between culture as communication (where the interpreter is viewed as providing valuable insights) and culture as context, which calls for more intricate information on the context of reference.

The legal context that underpins these discussions plays a crucial role. Courtrooms serve as vital sites in shaping our understanding of culture (Lawrence, 2001), and an examination of specific legal procedures and the mechanisms of reasoning that bring about racialization is necessary. The professional legal cultures within which individuals operate shape their practices and result in specific forms of professional pragmatism. In this sense, being pragmatic often involves eliminating communication barriers and facilitating the exchange of relevant information. Addressing issues of cultural diversity as contextual considerations in each unique case is another pragmatic approach that is less common but still significant. The idea is that the narratives presented in court align with the established legal criteria and demonstrate how legal categories, as defined by the law, can be utilized, manipulated, narrowed down, and sometimes disregarded to achieve the desired legal outcome (Edmond, 2004).

This illustrates the varying degrees of judicial discretion and limitation, demonstrating how judges and lawyers engage actively in case management, strategically shaping their presentations and reasoning within the bounds of procedural requirements and the necessity to establish plausible connections between evidence and specified legal causes of action.

In this sense, therefore, the organization and institutional setting of courtrooms, encompassing professional roles, organizational culture, resource limitations, training, and the nature of cases, collectively influence how legal professionals perceive and address cultural diversity. This diversity of factors contributes to varying perspectives among legal professionals regarding whether culture is primarily seen as communication or as context within the legal context.

In courtrooms where efficiency and quick case resolution are prioritized, there may be a stronger focus on immediate communication needs, while environments that emphasize thorough deliberation tend to encourage deeper consideration of cultural context, therefore further creating a separation of these aspects related to cultural diversity. Similarly, constraints in resources such as time, budget, and staffing are believed to affect how legal professionals approach cultural diversity, impacting their ability to invest in understanding and accommodating diverse cultural perspectives.

Only the third dimension directly addresses 'culture as norms', referring to norms that either judges or the parties involved consider culturally binding. This dimension becomes pertinent when judges must adjudicate legal matters involving foreign law and/or foreign customary or religious norms, for example, customary or religious marriage.

In brief, judges and lawyers appear to apply their understanding of 'foreign' culture across three dimensions—'culture as communication,' 'culture as context,' and 'culture as norms'—as a means to assimilate it within their 'own' legal culture for processing.

If we consider that judges' practical implementation of an operationalized working concept of culture is, to some extent, influenced by the characteristics of their own professional culture, which, in turn, affects the occasions and methods for seeking cultural expertise, it becomes crucial to closely examine this facet of internal professional legal culture. Such a concept assists in untangling the intricate interplay among historical traditions, institutional structures, procedural rules, and the ideas, attitudes, and practices of the individuals who make decisions, providing nuances of our findings that suggest that judges articulate the concept of 'immigrant culture' in a manner intricately linked to their specific working environment. Therefore, the focus is on the domain of ideology and practice that Merry (2010) identifies as the first dimension of legal culture, termed by Friedman (1997) as 'internal legal culture', and aligning closely with Bourdieu's 'juridical field' (1987). Reflecting the various interpretations of the term 'legal culture' outlined earlier, it is here employed 'professional legal culture' in three distinct ways: firstly, as an indicator for the general context in a broad sense; secondly, as a mid-range explanatory concept encompassing structural, ideational, and procedural elements; and thirdly, in an ethnographic sense as a concept to comprehend micro-level practices, interactions, and meanings (Vetters, Foblets, 2016).

4.3.3 The Impact of Cultural Diversity Across Legal Domains

Embarking on this doctoral journey, the initial phase involved a thoughtful decision to concentrate the research focus specifically on family and juvenile law. This choice was born out of a steadfast belief in the profound significance of the cultural context within these legal realms. Acknowledging the intricacies involved and the limitations of delving simultaneously into criminal and civil law, a deliberate decision was made to channel the efforts only into such legal areas, due to the convictions of the nuanced interplay between cultural factors and legal considerations within these domains.

However, the path to refining the research question did not conclude there. Recognizing the dynamic nature of legal practices and the evolving landscape of cultural diversity, it became imperative to seek insights directly from the legal professionals operating within these spheres. Hence, a decision was taken to engage lawyers and judges in a dialogue, tapping into their wealth of experience and perspectives. Through these interactions, the aim was to explore their perspectives on the specific areas of law where they perceived cultural backgrounds to hold relevance, a crucial step in refining the research focus and aligning it with the lived experiences of legal practitioners.

During the semi-structured interviews, lawyers and judges were specifically questioned about which areas of law emerging as affected by cultural diversity and how. In the exploration of the interviews, the identified domains where cultural diversity significantly shapes legal considerations encompass family law, international protection, family and succession law, criminal law related to family relations, and immigration law. What emerges is that the profound influence of cultural diversity within family and minor law is recognized by all lawyers and judges interviewed, stressing the escalating prevalence of parties with foreign backgrounds, as well as international protection, as it is possible to understand from some extracts from the interviews.

A lawyer, for example, sheds light on specific legal domains she believes are notably influenced by cultural diversity. She underscores the significance of cultural differences in family law, asserting: "Certainly, the family domain, particularly concerning civil minors, is an area where the consideration or neglect of cultural elements becomes an integral part of the proceedings” (LF-5). According to her, understanding and adjudicating cases in family law necessitates a deep consideration of the cultural backgrounds of the individuals involved. Expanding the scope, she extends the impact of cultural diversity to criminal law, particularly in cases involving parent-child relationships or offenses related to abuse and sexual assault. She elaborates, stating: "Those offenses related to relationships between fathers, older fathers, and parents and children” (LF-5).

From her perspective, it becomes evident that cultural nuances within familial dynamics significantly shape the course of legal proceedings, encompassing both family and criminal law arenas.

In discussing these issues with lawyers and judges, other extracts offer crucial insights concerning the relevance of family and juvenile law, when dealing with multicultural diversity:

> In addition to family law... certainly, international protection, the entire field of international protection. It already is institutionalized because the court conducts cultural area investigations when issuing measures. It is an area experiencing a boom in terms of the quantity of proceedings. In Milan, I believe it is one of the areas with the highest number of disputes in international protection matters, so I would definitely say this (JF-4).

> In the entire family domain. All of it. Because I mean, especially then, whether the marriage is between two of the same ethnicity or religion, or whether the marriage is mixed between two from different parts of Italy or different religions, because the issue can be intercultural in the case of a mixed marriage or in terms of integration and adaptation to our culture compared to cultures of different origins. […] or cases where a child is born here or arrived here at a very young age, nonetheless educated in the Italian context, and with a strong desire for integration into this culture that is not their own, coupled with the imposition by parents of strong models of belonging (JF-6).

The profound impact of cultural diversity on family and minor law is emphasized by the challenges in evaluating parental capacity and competence in situations of separation and familial crises within diverse cultural contexts, as emerges by what said, for example, by a judge: "Parenthood, I believe, is profoundly different depending on one's cultural background" (JM-2)[34].
Moreover, as emerged through the interview with LM-7, the influence of cultural diversity extends across all legal areas a different way, stating:

> From criminal law to civil law... when there is a foreign person, which is obviously not a French or German person who has more or less similar cultural background to ours, when dealing with people who come from relatively different cultures it is important to explain the system to them (LM-7).

[34] Italian juvenile jurisprudence generally has fluctuated among three perspectives: the first, justificationist, seeks to eliminate the notion of the child's abandonment by solely invoking the cultural identity of the family of origin; the second, negationist, neglects to assess potential influences of diverse cultures on parental decisions, thus failing to acknowledge and condemning them as detrimental to the child's welfare; and a third, labeled as classist, promptly associates situations of the family's marginality with instances of abandonment. (Mondino, 2017). In the context of the Italian legal system, the overarching principle guiding proceedings involving children is the consideration of the best interests of the child.

Such an assertion implies that cultural diversity becomes especially salient when individuals come from backgrounds that differ significantly from the host culture, necessitating an explanation of legal systems in various legal domains. Not only must legal practitioners navigate the cultural and linguistic nuances of immigrant persons (we can go back to the possibility of considering culture as communication and context), but they must also operate within the broader context of Italian legal culture, which is characterized by its own set of norms, procedures, and interpretive frameworks that shape the dynamics within which legal interactions unfold. The linguistic issue is compounded by the challenge of understanding the rules and meanings of institutional actions in the host country, as well as by the need for knowledge of diverse cultures among professionals in the healthcare, judicial, educational, and other sectors.

Following further solicitations, lawyers and judges have pointed out that more than just in cases related to family law, cultural diversity appears to be relevant in those areas of law in which relationships play a key role. Therefore, family and juvenile law such as some criminal law fields related to family relations can be particularly affected by cultural diversity, acknowledging the profound sway of cultural backgrounds in shaping effective familial relationships and legal considerations.

> Where there is greater attention to the person. Actually, in my opinion, there should be this attention in the law regardless. The legal aspect, okay, agreed, but attention to the person is fundamental. And if you ask an ordinary judge…I don't know what they would answer! [she jokes] (JF-7).

> Certainly, in any context dealing with the law of relationships, they involve any theme because even in easier situations, such as separation... a family in crisis... even there, sometimes this diversity of cultural approach is strongly felt. And then, another situation that should be explored a bit more is within communities, mothers and children, for young people... I am on the board of directors of a mother and child reception community, and indeed, these issues are very important because lately, it happens more and more often that there are community situations with the arrival of many mothers from different countries (LF-1).

Within this rather homogeneous context, one judge, alongside family law matters, identified cases related to the mafia as a potentially impacted legal domain, therefore introducing a different point of view on what can be considered as cultural behavior and a different legal field to take into account:

> In mafia proceedings...I have dealt with those more. There is a gigantic cultural component there, which does not allow the phenomenon to be interpreted correctly. There are strictly cultural codes of behaviour that if you do not understand you cannot understand anything that is being done, you do not give it the right meaning (JM-1).

As legal lawyers and judges shared their insights, a richer understanding emerged regarding the profound impact of cultural diversity on family law, particularly cases involving minors, and its extension into criminal law. Their narratives illustrated the complexities, challenges, and necessities within these legal domains, emphasizing the imperative for legal practitioners to navigate diverse cultural perspectives. The multifaceted impact of cultural diversity on specific legal realms became evident, shaping a nuanced narrative that goes beyond a theoretical understanding, paving the way for further exploration and integration of cultural perspectives within the fabric of legal practices.

4.3.4 Cultural Background in Legal Cases

After grasping how judges and lawyers articulate and apply the concept of culture, and which are the main legal fields affected by cultural factors, the focus shifted to examining its practical implications in their day-to-day activities. This exploration aimed to discern the potential significance of cultural backgrounds within specific legal contexts. Against the backdrop of what emerges as a common theme, namely the emphasis on balancing cultural sensitivity with the protection of fundamental rights, reflecting a shared commitment to ensuring a just legal process, the responses from the interviewees collectively underscore a shared recognition of the significance of cultural understanding in legal proceedings, particularly in the realm of family law and cases involving minors, as emerged in the previous paragraph. Across the responses, in fact, there is a consistent acknowledgment that cultural backgrounds play a crucial role specifically in shaping family dynamics and influencing individual behaviours. However, while there is a general alignment on the importance of cultural awareness, nuances emerge in the extent to which interviewees believe cultural factors should and do influence legal decisions.

The lawyers and judges interviewed highlight specific instances where cultural differences have tangible impacts on legal proceedings, such as dietary practices, religious observances, resistance to Western models, and different approaches to parenthood, as well summarized by a judge:

> I am experiencing, let's say, more challenging thematic areas, a bit more problematic, such as approaches to parenthood. It seems to me that they always turn out, perhaps a tad more

> complex, because, obviously, there are different family conceptions, or the religious context, the interests of the minor (JF-5).

As it is possible to see from the interviews, the intricate role cultural background plays in family-related legal proceedings is emphasized.
The multifaceted impact of cultural diversity is acknowledged, both within homogenous marriages and mixed marriages. The consideration extends beyond mere acknowledgment, encompassing a deeper understanding of how cultural nuances influence family dynamics. The intricacies involved, ranging from intercultural challenges in mixed marriages to the integration and adaptation of individuals from different cultural backgrounds, are articulated by the interviewees. This highlights a nuanced awareness of how cultural background significantly informs her daily work, shaping perceptions and decisions within the realm of family law.

Some of the interviewees highlight specific cases involving Muslim families, shedding light on the tangible impact of cultural differences on legal proceedings. For example, as explained by a lawyer:

> I had a client of Muslim faith, I've had more than one, separation issue is about food, what the children can eat. There's an internal struggle on this matter of food and observance and Ramadan because sometimes they insist that even young children observe Ramadan, so they fast, and we're not talking about teenagers, we're talking about children who are 9 years old, 10 years old, 11 years old, the more religion is present, and it is, let's say, a principle in that case evidently, the more this creates an absolute problem in managing family disputes, evidently (LF-4).

These examples underscore the need for lawyers and judges to navigate issues such as dietary practices and religious observances, indicating a practical awareness of how cultural nuances can significantly shape legal outcomes. By pointing out such a need, the objective is to highlight the intricate intersection between cultural considerations and legal decision-making. "Dietary practices" and "religious observances" are not merely abstract cultural concepts but rather concrete aspects of individuals' lives that can impact legal cases. For instance, dietary restrictions may have implications in family law cases, such as child custody disputes where the upbringing and lifestyle choices based on cultural practices come into play. Therefore, it implies that understanding and addressing cultural nuances is not a passive acknowledgment but a dynamic and skilful process that requires careful consideration, being therefore not just an abstract or theoretical concept but something that has direct implications for the practical aspects of legal proceedings.

Moreover, the profound impact of cultural diversity on family and juvenile law is emphasized by the challenges in evaluating parental capacity and competence, overall, generally recognized by the

majority of the interviewees. One compelling insight arises from the experiences of a legal practitioner who collaborates closely with a psychologist, which opened a window into the diverse nuances of affection and emotional bonds in the context of legal proceedings. The lawyer reflects on discussions with the psychologist, shedding light on the profound disparities in the experience of affection within families of different cultural backgrounds. Drawing a vivid comparison, the lawyer contrasts the emotional dynamics between an Italian mother and her children with those of a Moldovan mother from the East and her children:

> I happened to talk about this psychologist I collaborate with, who has given me suggestions and insights on the different way of affection, on the subject of affection, on the emotional bond, and the type of emotional bond that can exist, which is very different, for example, from us compared to, I don't know, a Romanian-Moldovan mother, I don't know if there are differences, and her children. An Italian mother and her children, a Moldovan mother from the East and her children. Precisely in the realm of emotional relationships, and she pointed out many things to me that I had never questioned before, I had never reflected on exactly in a deep way (LF-11).

Pragmatic challenges also surface in the incorporation of cultural considerations into legal proceedings. While advocating for the significance of cultural background, legal professionals candidly acknowledge potential blind spots in routine cases, such as separations involving different nationalities. However, this acknowledgment serves as a catalyst for proactive measures, with lawyers actively seeking support from translators and psychologists, when possible from an economic point of view. This pragmatic approach reflects a commitment to addressing challenges and ensuring that cultural considerations are not overlooked, even in cases where they may be less overt.

In the context of operationalizing cultural awareness, a judge emphasizes its utility in the very operational phase of legal work, noting that cultural awareness is particularly valuable when delegated tasks involve the core aspects of legal evaluation, especially in juvenile criminal law cases such as child neglect.

> I think it [cultural awareness] would be more useful in the very operational phase, i.e. if we delegate an evaluation, an activity work on the core, that yes, ok, then it is very difficult, in the sense that they are really situations where we clash. Sometimes they cannot understand the reason of our decisions. it is a barrier [...] you just do not understand it. I mean that is definitely a task where a cultural mediator can help. He could help us to understand their point of view, but for our purposes of concrete operation I found it more useful in criminal law, that is, with respect to a case of child neglect. When I was a criminal judge, a case of abandonment of minors was more correctly understood, but as willful misconduct, that is, as the will to carry out an action thanks to a cultural mediator. That is to say, it affected not the

> existence of the crime, but the punishment, within the limits of a legal framework. I have already said so, within the limits of fundamental rights, it is always useful because you can make people accept more and understand the reason for decisions (JF-5).

The judge suggests that clashes may arise due to cultural differences, leading to difficulties in understanding the reasons behind decisions. The proposal of employing cultural mediators is put forth as a solution to these challenges, highlighting their potential role in fostering mutual understanding and aiding in the concrete operation of legal tasks.

Exploring the intricate relationship between cultural background and the daily practice of law reveals a nuanced landscape where legal professionals grapple with the multifaceted dimensions of cultural diversity. Within the legal realm, the consideration of cultural background emerges as a pivotal factor influencing various aspects of the legal profession. Legal practitioners, as highlighted in interviews, underscore the paramount importance of understanding an individual's cultural background for effective legal representation. This extends beyond mere recognition of cultural diversity, delving into the personalized dimensions of an individual's history, familial journey, and broader societal contexts. The emphasis on individual narratives within the legal process, proposed by some lawyers and by the judges of the juvenile courtroom (not by the ones of ordinary family court!) reflects a commitment to a holistic approach, acknowledging that cultural backgrounds are dynamic and deeply personal.

Legal practitioners recognize that factors such as personal history and familial context contribute to shaping an individual's experiences and interactions with the legal system. This nuanced understanding allows legal professionals to tailor their strategies to address the specific cultural nuances at play in each case. Moreover, the recognition of broader cultural contexts, spanning legal, religious, and societal dimensions, adds complexity to the integration of cultural considerations in legal work. Legal professionals grapple with the need to navigate the intricate web of cultural influences that permeate various aspects of a case.

In fact, it is important to consider that, unlike the ordinary court, the juvenile courtroom is a specialized judicial body that, since its inception, has envisaged the integration of the legal knowledge of professional magistrates and the diverse expertise of honorary judges. This integration aims to make decisions that promote protective paths and support for the growth of minors. Guided by the 'primary interest of the child,' judicial determinations in civil, criminal, or administrative proceedings, therefore, require an in-depth exploration of various levels of the minor's living conditions, adopting a forward-looking perspective, supported by significant dialogue and collaboration with local services and external figures.

The interviews with the judges, although of a limited number, provide a glimpse into such institutional and organizational context of the judge's work, highlighting the unique challenges and dynamics within the tribunal. A judge describes the organizational structure, stating: "Our juvenile court, the juvenile judges have a dual function, as it is debated whether to establish a section that primarily deals with criminal matters and one that primarily deals with civil matters, so to speak" (JF-6), pointing to the dual role of judges who handle both civil and criminal cases related to minors. In Italian, the use of the term "promiscuità", here translated with “dual function” suggests a blending of functions, illustrating the complex nature of dealing with diverse legal matters within the same tribunal.

Furthermore, the judge provides insights into the role of honorary judges within the organizational structure, emphasizing their diverse professional backgrounds:

> There are honorary judges, who are lay judges in the sense that they are not professionals; they do other things. They have degrees in other fields; they are social workers, psychologists, psychotherapists, child neuropsychiatrists, criminal anthropologists, criminal experts. There is a statistic that the CSM (Superior Council of the Judiciary) identifies as professional figures, but generally, these are the ones most present. Of course, we don't have a chemist, we don't have a biologist; we don't need them. If we need expertise of that kind, we appoint a technical consultant and thus avail ourselves of their knowledge (JF-6).

Returning to the analysis concerning personal experiences and interactions with the legal system, it is interesting to underline that culture is sometimes used as a factor that somehow affects the procedural process in terms of timing. When questioned about whether the cultural factor has some relevance in legal cases, a judge of the juvenile court responds:

> Absolutely! Relevance in the sense of...not in the sense of an element that constituted a difficulty, but rather as an element that was emphasized in explaining why certain proceedings needed more time.
> For example, we have seen improvements in the development of the parental project...complex cases are not those cases in which we say that the children are entrusted to both parents, but those cases in which both parental figures need to be helped. So when there is a limitation of parental responsibility, there have been several cases in which, in giving the assignment of support and thus verifying the possibility of reintegration in parental responsibility, value was given to the fact that they would probably take longer to take in certain inputs because the cultural datum for them was more...created difficulties in understanding. I give an example: thinking of entrusting three children exclusively to a father, in a South American couple, where even more than in our culture the preference for the mother is typical, it was a titanic task to make the mother understand that the father in

> that situation was the most appropriate. They did not close the case, they waited for the mother to understand how important the father figure was for the daughters, to make her accept the fact that the daughters were with their father, something almost inconceivable to them (JF-4).

This insightful testimony from the judge provides a profound glimpse into the intersection of culture and legal proceedings, revealing how cultural factors can intricately shape the timing and dynamics of cases.

In the realm of technical and legal procedures, governed by codified frameworks that are increasingly influenced by the timing determined by judges and lawyers, additional time factors come into play. These include traversal times, referring to the intervals between court hearings, which can be notably prolonged based on the schedule of the assigned magistrate handling the case.

It underscores the necessity for a nuanced approach in navigating cultural complexities within legal contexts. In fact, the judge's account serves as a poignant reminder that the legal system, while inherently procedural, is profoundly influenced by the diverse cultural backgrounds of those involved. Moreover, when considering the timing and dynamics of cases, it is evident that there are differences between ordinary courts and juvenile courts, partly due to their respective operational methods and, therefore, different autonomy of the judges.

Summarizing, for what concerns the juvenile court, it can be affirmed that the judge operates within a procedural framework, where the reporting judge - a legal professional - presents cases to a panel with a composition consisting of two legal professionals and two expert members (one male and one female). This panel makes all decisions in the proceedings, except for simpler investigative tasks like delegating investigations and scheduling hearings.

In nearly all cases, the initiation of proceedings falls to the juvenile public prosecutor, tasked with safeguarding the fundamental rights of minors, and the prosecutor activates the juvenile court by filing a petition containing investigative requests and protective measures.

Often, this occurs after the prosecutor has already delegated investigations and sought parental cooperation for proposed interventions, reserving the right to act based on initial findings from collected reports in cases where parental cooperation is lacking. Against this backdrop, due to the current scarcity of resources, particularly in specialized social and healthcare services, there are significant delays (often exceeding a year) in submitting required assessments within the decreed timelines. Consequently, this delay impacts the implementation of socio-psychological-therapeutic interventions (Ortolan, 2021).

The challenges posed by a procedural system that lacks fixed-date hearings, coupled with the substantial caseload assigned to each reporting judge (an average of 800 cases per judge in Milan, excluding adoption cases), insufficient staff, and a lack of computerization, make it extremely challenging for judges to exercise precise control over meeting deadlines assigned to third parties (primarily social services) and maintaining a procedural pace that aligns with the legal system's fundamental principle of ensuring a reasonable duration for proceedings, namely three years in the first instance, akin to ordinary proceedings (Ortolan, 2021).

On the other hand, in the ordinary court, the judge has the authority to initiate involvement of social services and healthcare specialists, irrespective of the parties' requests, to conduct assessments on the family's circumstances, parents' well-being, and children's conditions. Following these assessments, it is possible to advocate for support and intervention services as needed. However, according to Ortolan (2021), when dealing with complex investigations and interventions, particularly those involving minors, convincing the services to adhere to deadlines for submitting updated reports became challenging. These deadlines were tied to hearing schedules under the ordinary trial calendar, aligning with the principle of ensuring proceedings are completed within a reasonable timeframe.

As a result, it can be observed that the juvenile court, designed to accommodate individual needs, allows more flexibility for judges to independently assess cases, whereas the regular court is more constrained in this aspect. Nevertheless, as discussed, the level of procedural flexibility in both courts is inherently tied to the organizational and institutional context, which ultimately impacts the efficiency of the justice system[35].

Besides these organizational difficulties, in the narratives of the interviewees, several complexities emerged, when dealing with cultural diversity. In response, it becomes evident that legal professionals may and do benefit from the involvement of external figures, such as cultural mediators, to facilitate communication and understanding in certain cases.

In this sense, the point of view of a lawyer (LF-2) allows to emphasize the presence of individuals from the same cultural background as facilitating case resolution. This suggests that cultural understanding is not only essential for legal professionals but also for the broader legal ecosystem,

[35] In recent years, various Italian courts have pursued parallel paths of innovation, yielding notable outcomes. In 2011, the Italian Superior Council of the Judiciary (CSM) established a national database of best practices in organizational matters. They encouraged offices to share innovative solutions and practices developed locally, focusing on workload management planning, backlog reduction, and ensuring reasonable duration of proceedings (49%); information technology (36%); and office procedures and judicial support (15%) (Verzelloni, 2020).

including support staff and interpreters. The interviewee's insights into the impact of cultural differences on family dynamics, societal expectations, and the perception of authority further contribute to a comprehensive understanding of the complexities involved. In fact, as emerged from the interviews as a crucial theme, cultural differences can significantly impact how individuals perceive authority figures, including those within the legal system. Different cultural backgrounds may influence how people perceive legal processes, trust in legal professionals, and interpret legal decisions. This is crucial to introduce a systemic view, emphasizing the potential challenges inherent in addressing cultural differences within the legal framework, and highlighting the need for a nuanced and context-specific approach to navigate the complexities arising from sociocultural diversity.

The legal landscape's understanding of the role of cultural background is further exemplified in the recognition of the importance of cultural mediators in navigating family conflicts. Legal professionals understand that these mediators are not mere translators but individuals with shared cultural sensitivity, essential for mediating conflicts influenced by diverse cultural backgrounds. This acknowledgment extends beyond linguistic differences, delving into the underlying cultural dynamics that can impact behaviour and responses within legal proceedings.

In conclusion, the examination of how judges and lawyers navigate the intricate interplay between cultural background and daily legal practice reveals a landscape rich with complexities and nuanced considerations. The interviews shed light on the need for a dynamic and skilful approach to cultural awareness, emphasizing that it is not a passive acknowledgment but an active, ongoing process with direct implications for the practical aspects of legal proceedings. As the legal community in Milan grapples with these challenges, the following exploration delves into the role of expert consultation in navigating the complexities of cultural considerations, providing further insights into the decision-making processes within the courtroom.

4.4. Expert Consultation and Decision-Making

As emerged in the final part of the previous paragraph, the analysis of interviews sheds light on the dynamics of expert consultation and its role in shaping legal decision-making. Through the interviews, in fact, it was investigated whether lawyers and judges contact an expert, and on what grounds, besides which kinds of knowledge are considered when talking about cultural expertise.

Numerous scholars have explored the potential of cultural expertise in legal contexts, underscoring its potential advantages (Holden, 2011a; Good, 2006; Rosen, 2017). The utilization of cultural knowledge in court proceedings is not a recent development and historical records indicate its use as early as 1895 in Native American tribal claims in the United States (Holden, 2019b, 183). Since then, anthropologists and other cultural experts have participated in legal matters, addressing issues such as racial segregation, land claims of indigenous communities, the adjudication of asylum cases (Rosen, 2018), and in general civil and criminal cases.

As highlighted in the initial chapter of this study, Italian law permits the participation of socio-legal experts in legal proceedings. In instances where the matter at hand cannot be resolved solely through general knowledge or experience, the court, public prosecutor, and involved parties have the authority to seek guidance from professional experts. The regulations governing the role of experts in the Italian judicial system are delineated in Articles 61-64 and 191-201 of the Code of Civil Procedure, and Articles 225-233, 359, 360, 501, and 502 of the Code of Criminal Procedure, with different terms applied based on the jurisdiction. Distinct roles include the court-appointed expert witness (CTU) aiding the court in civil matters, the expert witness supporting the court in criminal matters, the technical consultant (CT) assisting the plaintiff, and the party technical consultant (CTP) aiding parties in both civil and criminal cases. Specific courts maintain lists of experts deemed professionally and technically qualified in specific matters and possessing respectable moral conduct (Ciccozzi & DeCarli, 2019). However, the selection of advisors is not confined to the registry; court participants have the option to engage experts not registered with the court, providing proper justification.
A dichotomy arises between professional/nonprofessional and public/private expertise. Professional cultural expertise is performed by qualified professionals such as anthropologists, historians, ethnopsychologists, or academics, recognized as experts on cultural issues relevant to a case, regardless of their affiliation with the cultural group. In contrast, nonprofessional expertise is offered by a layperson or an institution of a specific cultural group, with the nonprofessional cultural expert explaining the cultural issues based on community affiliation. Regarding public and private cultural expertise, the former is initiated by the judge using public funds, while the latter is sought by the lawyer, with the defendant covering the costs (Ruggiu, 2019).

Based on the interview findings, it seems that, in practical terms, individuals from a diverse range of backgrounds are frequently summoned or anticipated to offer 'expertise' by prosecutors, courts, or litigants. Setting aside the evident distinctions specific to each field, a significant level of

uncertainty prevails concerning their actual or potential roles and the interviews showcase a nuanced approach to engaging cultural experts, with particular emphasis on cultural mediators and interpreters.

What emerged from the interviews concerning the willingness and/or possibility to turn to external experts, however, should be read in the light of further considerations and findings.

While it is true that the field of this research was both the ordinary family court and the juvenile court, substantial differences were found in the approach of the interviewed judges, also in the light of a different organizational structure, briefly presented at the beginning of this chapter, which it is therefore essential to take into consideration.

The very diverse array of backgrounds among honorary judges reflects a conscious effort to incorporate varied expertise, including social work, psychology, and social scientists, into the legal decision-making process. This organizational strategy aligns with the recognition of the multifaceted nature of cases involving cultural diversity and minors.

What emerged from these interview excerpts makes one realize how the organization of the juvenile court itself envisages greater involvement of differently trained experts as an integral part of the process. This approach, of course, is reflected in a greater predisposition on the part of the judges to consider and seek out other forms of knowledge as fundamental in some specific cases, such as in the case of cultural diversity.

In this sense, it is possible to identify a strong difference in the way judges of the family courtroom and the ones of the juvenile court approach their work, interact with clients and colleagues, and uphold different work approaches within the legal system.

This difference is not merely procedural but reflects a deeper institutional commitment to holistic decision-making and an understanding that expertise beyond legal realms is fundamental in dealing with juvenile law.

4.4.1 Cultural Mediators, Interpreters, or Social Services?

Mediators and Interpreters: Two Distinct Figures

In the context of cross-cultural contacts, the roles of both interpreters and cultural mediators are crucial, each fulfilling different but complementary roles in promoting successful communication

and understanding, although, in the answers of the interviewees, the distinction between these figures is not consistently articulated nor indicated.

Interpreters work mostly in language, acting as linguists to help people who speak various languages communicate with each other. Their responsibility is to accurately and faithfully transmit information, whether it be spoken or written, making sure that the intended meaning is understood exactly[36]. Interpreters are occasionally tasked with providing impromptu and informal cultural insights in matters initially linked to language and communication. This occurs due to the inherent connection between national culture and language and in response to criticisms directed at verbatim translation (Cooke, 2021). The role of interpreters as cultural intermediaries may be somewhat unavoidable given this close relationship. Nevertheless, although delineating a clear boundary between linguistic and cultural interpretation appears challenging, there are situations where it becomes crucial to emphasize a more distinct separation between the two. In fact, cultural mediators play a more comprehensive and intricate function, going beyond linguistic skills to include a multidimensional comprehension of cultural subtleties. Their duties extend beyond language interpretation to include cultural quirks, social mores, and environmental situation interpretation. Cultural mediators serve as go-betweens, guiding mutual understanding and cultivating cultural awareness as they navigate the intricacies of cross-cultural relationships. In the latter part of the 1990s and early 2000s, the professional function of the cultural mediator came into existence. Initially, it evolved as an organic grassroots initiative involving associations, immigrants, and volunteers, in direct response to the demand for assistance (Luatti, 2021). Despite the absence of occupation-specific characteristics in legal and policy instruments, allusions were made to the mediator's role in facilitating relationships between foreigners and public administration, particularly within justice, education, and welfare systems (Avolio, Cavallari, Cecchini, 2023). Cultural mediators are specially qualified to handle the socio-cultural aspects that underlie communication difficulties, in contrast to interpreters who focus primarily on language. In addition to translating language content, their responsibilities frequently include analyzing cultural context, preventing misunderstandings, and promoting amicable idea exchange. To put it simply, interpreters are experts in language accuracy; however, cultural mediators contribute another level of cultural competency, enhancing communication by guaranteeing a more comprehensive and contextually aware exchange. To better clarify the role of the intercultural mediator, despite the lack of

[36] The body of work concerning court interpreting underscores the pivotal yet challenging role of interpreters, often thrust into the position of meeting legal actors' unrealistic expectations to function "as a disembodied mechanical device" (Wadensjö 1998, p.74; also see Morris 1995; 2010; Rycroft, 2011). Sociologist Ruth Morris (1995, pp.30-31) has emphasized that this "legal fiction" of expecting absolute accuracy in translation works in favour of the law, allowing it to overlook the inherent shortcomings of the interpreting process in failing "to reproduce an identical replica across the language barrier".

standardized training and duties, it is possible to identify its effectiveness at different levels. The first level is practical and orientational; at this level, the mediator performs tasks and functions toward their own group of origin and towards the service operators with whom they collaborate. The mediator informs, translates information, and brings the service closer, making it both more accessible and transparent. They provide service operators with information regarding cultural specificities, differences, and characteristics of the community of origin. The second level pertains to linguistic-communicative aspects: mediation plays a role in translation, interpretation, prevention, and management of misunderstandings, misinterpretations, and communicative blocks. The mediator not only translates messages and information faithfully but also clarifies what is implicit, reveals the hidden dimension, and gives voice to unspoken questions. Finally, at the psycho-social level, the mediator can assume a role in social change, stimulating the reorganization of the service, and enriching programming and activities to approach users more easily and effectively in the relationship (Urpis, 2018).

In delving into the dynamics of expert consultation and legal decision-making among judges and lawyers, it becomes evident that these legal professionals navigate the complexities of 'foreign' cultures across the nuanced dimensions outlined in the first part of this chapter: 'culture as communication,' 'culture as context,' and 'culture as norms.' Such an approach is employed as a strategic means to assimilate cultural understanding within their 'own' legal culture for more effective processing. The interviews underscore the pivotal role of cultural expertise, revealing a conscious effort to bridge linguistic and interpretive gaps through the engagement of experts such as mediators, translators, and psychologists. As legal professionals grapple with the challenges posed by cultural diversity in various legal contexts, their approach encompasses not only the pragmatic need for linguistic mediation but also a comprehensive understanding of cultural intricacies, extending into psychological and normative dimensions. This intricate interplay between legal and cultural perspectives unveils both the recognition of the significance of cultural knowledge and the practical challenges faced in seamlessly integrating it into the fabric of legal decision-making processes.

Culture as communication and culture as context are the dimensions most useful and used by lawyers and judges when dealing with expert consultation and the choice of experts is driven by the need for linguistic and cultural mediation, highlighting a practical approach to addressing cultural diversity within legal proceedings. The importance of engaging external professionals is stressed

mostly by lawyers[37] (but not only), as emerged from an interview: "What we lawyers do when there is a problem...we lawyers immediately ask for a translator of the parents' language to be called and actually, we should... and I always do it, I also ask for a cultural mediator" (LF-12), underlining the necessity of these experts in navigating language barriers and cultural nuances.

While the term "cultural expert" is usually not explicitly used by the interviewees, it is overall implied, both by judges and lawyers, that individuals with specific cultural and linguistic knowledge, mediation skills, and consultative capabilities could play crucial roles in enhancing the legal system's comprehension and handling of cultural diversity, despite such a figure is not always involved in legal cases. According to the personal experiences that emerged from the interviews, the figures considered experts in navigating the intersection of law and culture include translators, cultural mediators, and, in different contexts psychologists, and the selection of experts is generally guided by a pragmatic need for linguistic and cultural mediation, besides the need for psychological consultation.
The inclusion of specialists in ethno-psychiatry is also taken into consideration, further emphasizing the multidimensional nature of cultural expertise, extending beyond language translation to encompass a comprehensive understanding of the psychological and cultural intricacies at play in legal cases.

According to the answers in the interviews, major emphasis is placed on the role of cultural mediators, who are not merely viewed as translators but as essential experts with a deep understanding of both the legal system and the cultural backgrounds of the parties involved. A lawyer (LF-11) argues for the appointment of cultural mediators distinct from translators, emphasizing the need for individuals who can bridge the cultural gap and facilitate communication effectively. The cultural mediator is in fact someone:

> generally positioned between the social operator and the interpreter. The 2014 guidelines of the Italian Ministry of Interior (MINT) read mediators shall be confident with cultural and linguistic diversity. The role is to favour communication, dialogue and comprehension between foreigners and territorial administrations, decode stereotypes and facilitate the deconstruction of misunderstandings from both sides (Avolio, Cavallari, Cecchini 2023, p.130).

Therefore, the cultural mediators emerged as crucial figures in facilitating communication and understanding between legal professionals and individuals from different cultural backgrounds.

[37] This is mostly due to the functioning of the courtroom.

An interviewee describes them as individuals who "form a bridge linguistically, as translators, but also as mediators of relationships" (LF-3), emphasizing their dual role in linguistic interpretation and facilitating cross-cultural understanding. These mediators, though not necessarily trained, are recognized for their ability to decode the meanings of behaviours, beliefs, and attitudes, providing valuable insights into cultural nuances, and their expertise extends to helping legal professionals comprehend elements related to cultural contexts and norms, making them essential figures in cases involving cultural diversity within the legal system.

Alison Renteln (2004; 2006) has observed that the act of insiders explaining their traditions is deemed "more politically palatable" than engaging experts who are not part of the concerned groups. This rationale is intertwined with foundational disciplinary discussions regarding the ethics and politics of representation (Clifford & Marcus, 1986; Marcus & Fischer, 1986) and underscores the hesitation of several scholars to utilize etic rather than emic categories when describing diverse cultures and social groups. However, employing "insider experts" as sources of cultural expertise in court encounters its own set of challenges. It becomes problematic for courts to assume that community members can automatically serve as experts without any training, solely based on characteristics such as their ethnic identity (Holden, 2011a).

Accessing Experts: Limitations and Gaps

The scarcity of cases involving cultural mediators in Italian courts is underscored, despite the potential benefits, especially in cases where cultural and linguistic barriers pose significant obstacles. In this sense, the interviews also illuminate practical challenges and limits within the legal system, when the inclusion of an expert is potentially useful. As emerges from a judge's observation, the involvement of a cultural mediator is not common, according to his experience:

> Never done and never seen it done in my section, where this component is also very strong, because in mixed couples or even in couples who come from other cultural backgrounds, the parental dynamics, or even the distribution of roles within the family or that, are often, I sense it, strongly linked to their cultural background of origin, but I have to say it is a practice that probably guiltily does not exist. (JM-1)

This points to a potential gap in accessing specialized cultural expertise, raising questions about the practical incorporation of such knowledge into legal decision-making processes. Furthermore, the judge raises concerns about the lack of an institutional role for cultural mediators, stating: "The figure of the cultural mediator, I don't know why, but it does not have an institutional role" (JM-1), pointing to an institutional deficiency that potentially hinders the effective integration of cultural

knowledge, revealing a complex landscape where the absence of institutional recognition and standardized procedures collectively contribute to the existing limitations and gaps in leveraging cultural experts or mediators within the legal system.

In the interviews, the limitations and gaps within the legal system when dealing with cases that require cultural expertise are underlined. In recognizing the importance of cultural mediators, some lawyers and judges emphasize the existing challenges, particularly the lack of standardized training and professional registers for these experts, besides the need for a more operational approach, suggesting that the role of cultural mediators could be more effective in the operational phase of interventions rather than in the decision-making process.

A lawyer remarks: "Of course...the problem is also the title, because it is not irrelevant, the title to be able then...to get paid for one's expertise" (LF-12). This statement illuminates the bureaucratic hurdles and financial constraints that cultural experts face within the legal framework, further highlighting instances where the court struggled to find an appropriate cultural mediator due to the absence of a standardized system. The lawyer's insights underscore the gaps in official recognition, training, and financial support for cultural experts, emphasizing the need for a more robust and structured integration of cultural mediation within the legal system.

In fact, the process of professionalizing mediators has not followed a straightforward trajectory. Training programs endorsed by local organizations exhibit a diversity comparable to the varying competencies of mediators across different regions (Fabrizi, Ranieri, Serra, 2009). While there are some efforts to establish a cohesive framework for the professionalization of mediators, the landscape remains disjointed and is impacted by public disinterest. The result is that mediation continues to rely on informal networks and impromptu recruitments as a means to address the shortage of professionals possessing the required skills and recognition (Avolio, Cavallari, Cecchini, 2023), as stressed by a lawyer: “Yes, actually I have been faced with translators and mediators who were trained... quite a lot, that is, however... luckily, by chance. It may go well or not. There is no standard, and it cannot work like that” (LF-11).

Moreover, in particular considering the answers provided by judges, it emerges the delegation of social and psychosocial assessments to the social services:

> In my opinion, it could be that all in-depth activities on social and psychosocial dynamics are in fact delegated outside the court, in the vast majority of cases, the social services. I am afraid that we tend to do a package delegation. You tell me and you use the tools you think you should use. So since that kind of assessment is not done directly by us, we have never had that requirement. […] As feedback, I tell you that I have never seen a report from the

> services where a cultural mediator also intervenes. However, if I told the services to use a mediator, they could quietly say: mind your own business, I don't have the money for the mediator anyway, so you're on your own! I cannot enter into their organizational model (JM-1).

> That this then translates into a deepening or enhancement of cultural issues...does not happen frequently, or at any rate does not happen in the courts, in the sense that this assessment of cultural or social background is essentially done at network level, i.e. when we give the assignments of in-depth examination or verification of parenting skills or the conditions of minors in the family environment to social workers (JF-4).

Such a tendency has of course some exceptions. Different feedback came from some judges of the juvenile court, as:

> Instead, I try to make direct use of technical advice, particularly on adoptability projects... If I know I have to deal with parents who are both of the same ethnic group, maybe I avail myself of a C.T.U. who has this kind of training, or of C.T.U. who then relies on someone. For example, there is the Crinali cooperative in particular that I know. So it happened that I sometimes turned to them to look for support figures (JF-6).

Despite some exceptions, such as the one just proposed, the general trend is therefore an organizational tendency to relegate cultural considerations to external entities, without however being aware of the functioning of the external services of reference nor the qualifications of the people involved:

> [the importance of cultural factors] comes back to us as hints in the overall report of the services, which is basically done by social workers and psychologists. In fact, we don't even know who they are done by. By a guy who signs them, but who he is, what qualifications he has and what skills he has we don't know (JM-1).

Moreover, as stressed by the same judge, the hurdles encountered when attempting to introduce cultural mediation into the services unveil the resistance and financial constraints faced in aligning the legal processes with the nuanced understanding required in cross-cultural contexts: “If I were to suggest to the services to use a mediator, they could easily say: mind your own business; besides, I don't have the money for a mediator, so figure it out yourself! I cannot fit into their organizational model” (JM-1).

This disclosure raises crucial questions about the adaptability and inclusivity of legal organizational models when addressing the complexities of cultural diversity.

The delegation of social, psychological, and cultural assessments to external services, as revealed by judges and lawyers, mirrors the organizational tendency to rely on external entities for certain evaluations without the interest or possibility of a comprehensive understanding of their functioning and the qualifications of the involved personnel. This, of course, is something strongly related to the functioning of the social services, which is therefore going to be briefly presented to better contextualize the answers provided in the interviews and the findings.

Social Services of Milan

The local social services in Milan play a pivotal role in directing and managing cases, overseeing and promoting the implementation of psycho-social-educational interventions based on personalized projects involving various contracted entities by the Local Authority (public service executors). Additionally, they collaborate with socio-health and health services that can be engaged in these projects. Social services interface with health and socio-health services responsible for interventions supporting childhood, adolescence, parenting support, as well as specialized treatment for abuse, maltreatment, and assisted violence, and all situations of distress subject to civil and criminal proceedings involving minors. The Municipality of Milan, through the Territorial Area and Integrated Access System to Social Services, carries out these functions as social work to address socio-educational needs and provide professional support to parents and children through various targeted services and specific programs. This includes nine Professional Territorial Social Services corresponding to each Municipality area, with a diverse team of professionals such as coordinators, social workers, psychologists, and educational professionals. The services are tailored to the specific needs of the residents in each area.

Furthermore, there are central specialized services, such as the Emergency Minors Intervention team, which handles urgent and unknown situations not covered by territorial services, particularly placements of minors in emergency situations. The Central Investigations Group performs multidisciplinary analyses for families where the Juvenile Court identifies a hypothesis of harm reported by any public or private entity. The group evaluates the existence of risk/harm for the involved minors and works on preventive or protective paths for them, as well as providing support to parents. Other specialized services include the Coordination of Foster Care, which sensitizes and promotes the culture of family foster care for minors, and the Neutral Space Service dedicated to the care, construction, or reconstruction of family bonds in protected situations, all executed by professionals. There is also a service for minors subject to legal measures without precautionary measures, offering multidisciplinary support in the judicial process. Additionally, the services

include the Parents Co-Responsible Group, which addresses high parental conflict situations with targeted interventions for the entire family unit, and the Gea-Irene Bernardini Center, a micro-team of family mediators working with separated parents to autonomously build agreements on parental responsibilities. The LINK Project is a multidisciplinary team specialized in the treatment and management of conflict situations involving minor children under a court mandate. All social services operate through professional interviews, network meetings, home visits, and consultations with public and private social entities, and all activities are scheduled by appointment, and locations and times are agreed upon with the individuals or beneficiaries of socio-educational, social, or psycho-social support, whether individual, family, group, or community-oriented (Ordine degli Avvocati di Milano, 2023).

Social services lack the standing to become a party in court, thus they do not possess the authority to file an appeal. However, they can trigger the prosecutor's intervention by submitting a report. In certain instances, they not only have the authority but also the obligation to bring to the attention of the juvenile judicial authority any situations they are aware of where parental responsibility is inadequately exercised, leading to harm or neglect of the child. These reported situations may subsequently result in legal measures being taken against the parents. Their institutional objective is to provide support for the distress experienced by families and minors. Notably, social services are recognized for their institutional functions, which include the capacity to take autonomous action without explicitly seeking guidance or prescriptions from judicial authorities, especially concerning minors facing potential or actual harm. In these instances, the service is obligated to undertake all deemed necessary activities and initiatives. This involves formulating a diagnosis, devising an intervention plan, and crafting a treatment project aimed at aiding both the minor and the family unit.

4.4.2 Institutional Limits

In this section of the analysis, the aim is to incorporate a perspective informed by the Bourdieusian concept of field as a powerful analytical tool for understanding behaviours and social phenomena in general, and more specifically, its application within this research.

In delving into the nuanced dynamics of cultural diversity and the law, the examination of semi-structured interviews with lawyers and judges provides a comprehensive exploration of the intricate interplay between structure and agency within the legal field. Rooted in Bourdieu's legal field

theory, the experiences shared by legal professionals shed light on the complex nature of legal practice and the multifaceted roles played by individuals in navigating this structured framework. A layer of theoretical depth is added to our investigation by analyzing themes in relation to Organizational Theory and Institutions. With the aid of Bourdieu's framework, it is possible to analyze the themes that have been identified and comprehend how the participants' placement within the legal field is influenced by cultural factors, power dynamics, and professional habits. By revealing how cultural components are ingrained in larger legal organizations and how these institutions influence behaviours and attitudes, organizational theory and institutional perspectives both make a valuable contribution. By using these theoretical frameworks, it is possible to better comprehend how culture functions as a dynamic force within the Milanese legal profession by providing both clarification on the specific themes and context within the larger socio-legal milieu. The theme analysis is enhanced by this multifaceted theoretical approach, which provides a comprehensive and nuanced view of the intricate interactions of culture, legal procedures, and institutional dynamics.

Besides the lack of an institutional role for cultural mediators, another important issue emerged from the interviews. Some judges and lawyers raised critical stances from an economic standpoint, introducing a nuanced consideration concerning the limited involvement of external experts and suggesting that "There could be perhaps a limitation of structural resources" (JM-1), indicating a potential limitation in structural resources. This economic constraint implies that financial factors may pose challenges to the consistent involvement of cultural experts or mediators in legal cases. The economic aspect introduces a layer of complexity, as the allocation of resources becomes a crucial determinant, among others, in bridging the gap between legal requirements and the incorporation of cultural competence. The examination of semi-structured interviews reveals this to be a recurring theme within the legal system. Both lawyers and judges express concerns about limited resources, illuminating a broader issue that extends beyond individual cases. This theme serves as a foundational element, as the financial landscape shapes the ability of legal professionals to access and engage with cultural experts or mediators. Therefore, while discussing the necessity of cultural expertise in the legal system, the limits and gaps that exist are recognized, particularly concerning financial constraints and resource allocation.

As emerged from the interview with a judge:

> [...] since there is no money of any kind going around, I might even think that I would be well assisted by the expert, but I can't even foresee it because when we paid a few consultants, with the integration of psychiatry, it was a problem [...] we already have people

> who cry when they have to pay the lawyer and this would be a figure of extra-luxury[38], I don't know how to put it" (JF-6).

Here, the judge addresses the financial challenges that hinder the possibility of readily accessing cultural experts or mediators. The mention of the struggle to afford consultants underscores the practical difficulties within the legal system, highlighting the fundamental issue of inequality in access to justice. This sheds light on the gaps that exist in terms of funding and, consequently, the unmet need for experts who could significantly contribute to a more nuanced understanding of cultural complexities within legal proceedings.

Moving from financial constraints, the questions navigated toward discussions on structural constraints and gaps within the legal system. The absence of institutionalized attention becomes apparent, reflecting a structural gap in addressing cultural complexities, underscoring the tension between the agency of legal professionals and potential structural limitations in recognizing and accommodating cultural nuances within the legal system.

The interviews shed light on the structural constraints and agency struggles within the legal field. A lawyer's statement, "And above all, there was no interpreter at the hearing; if I hadn't brought one to communicate with the judge, there wouldn't have been any. It was complicated, in short, very bad" (LM-7), illustrates structural gaps within the legal system. This reflects the constant negotiation and interaction between the agency of legal professionals and the structural constraints they navigate in the pursuit of justice, underscoring the ongoing tension and dynamic interplay between structure and agency within the legal field.

> For what is my little slice of experience, the feeling is that it is an issue in general that perhaps is talked about, in the sense that both in the acts of the parties, and perhaps in an implicit sensitivity on the part of the judges, it emerges how much cultural factors have influenced certain choices. But I do not see this institutionalized attention in a specific channel, that is... we have a South American or Sri Lankan couple, to understand their dynamics we must have someone to explain what they are. I don't see that. Then it may be that in other sections it happens in a much more massive way (JM-1).

The interviewee expresses a perception of a lack of institutionalized attention, suggesting a structural gap in addressing cultural complexities within the legal system. This tension between the agency of legal professionals and the potential structural limitation in recognizing cultural nuances underscores the broader debate in legal practice.

[38] It is important to emphasize that the expenses for the involvement of an expert appointed by the court (CTU) are borne by the parties, just as for an expert appointed by the parties (CTP), the expenses are borne by the party who commissioned the appointment.

Furthermore, the interviews bring to light the recognition of agency, where individuals such as cultural mediators actively engage in the legal field to address cultural challenges. A judge highlights both agency and structural constraints, stating, "… you know, unfortunately you can't even ask yourself the question, because since there is no money of any kind going around...' (JF-6).

Here, financial limitations act as a structural constraint, restricting the judge's ability to access necessary expertise. The interplay between agency and structural constraints points to the complex dynamics within the legal field as individuals negotiate and navigate a system shaped by both agency and structure. In this sense, in fact, it is possible to recognize agency as manifested in legal practitioners, judges, and lawyers, with their recognition of the importance of considering cultural aspects in case management and the practices they implement or acknowledge as useful and necessary, and structural constraints, evident in financial limitations.

Moreover, there are other kinds of limits when trying to involve external experts, as emerges from the words of a judge: "In the criminal sphere we are much freer, because whereas in the civil sphere we are strictly bound to the register and if you go outside the register you have to ask for authorization from the president of the court, justification, etc. etc., in the criminal sphere we do not, we appoint who we want, so this constraint is not there" (JM-1). This suggests that in civil cases, there are formalized procedures and regulations, likely maintained in a register, which limit the freedom of choice in certain aspects of legal proceedings. The requirement to seek authorization from the president of the court and provide justifications signifies a structured and regulated environment within the civil domain, pointing to a formalized and hierarchical system.

Considering the issue at stake, a lawyer provides insights into the inherent limitations and gaps within the legal system when it comes to engaging cultural experts or mediators. The lawyer points out the necessity for professionals such as mediators and translators in legal proceedings, emphasizing their importance in addressing cultural nuances. However, besides the importance of such professionals, through the interview, it is strongly assessed a hierarchical consideration for different kinds of expertise:

> "CTU is always sacred, so it is always paid first, but CTP, cultural mediator, translator...there are judges who perhaps settle the fees of all these professionals long after even the final decision." (LF-11).

This quotation is important to highlight the prioritization given to court-appointed CTU over CTP, according to the lawyer interviewed. This insight provides a glimpse into the hierarchical

recognition of expertise within the legal system, raising questions about the criteria for selecting such figures and how their expertise is employed in addressing the cultural dimensions of legal cases. This prioritization, coupled with delayed compensation and bureaucratic hurdles, underscores the existing gaps in acknowledging and compensating cultural expertise within the legal system. In fact:

> But in any case, once you get paid, you don't have the money in your pocket because then there is the whole painful rigmarole of going from one chancellery to the other... and then the problem is always the availability of funds. Every year, an amount of money is allocated, which is always finished in a hurry and therefore... sometimes these procedures actually end up... these proceedings here, which then take the judge years, also have a cost, between various professionals, have a very high cost (LF-11).

The lawyer's concern about limited funds and the high costs for the involvement of external experts further accentuates the institutional limitations that hinder the seamless integration of other professionals.

Moreover, is it important to stress that, structurally, once the judgment is drafted and physically delivered to the court's records office, it no longer falls within the judge's jurisdiction but remains incomplete. To become enforceable, the judgment must be registered by the dedicated revenue office under the Ministry of Finance, an organization distinctly different in structure, purpose, and technology compared to the justice system. If the registration of the judgment requires payment by one of the parties' lawyers, it adds political timelines aimed at delaying the expenditure of funds to the technical timelines of the revenue office (Zan, 2003).

Insights from the interviews deepen the exploration, revealing a dynamic interaction between structural constraints within the legal domain and the agency exercised by legal professionals. The lawyer's emphasis on the importance of cultural background in family law aligns with Bourdieu's notion of habitus, where individual dispositions are shaped by social structures. The lawyer's role as a special curator in the courtroom further exemplifies the structured hierarchy within the legal field, with specialization representing a structural constraint. Simultaneously, the acknowledgment of the need for cultural expertise and the use of external tools like mediators and interpreters signifies an agency-driven response to navigate and interpret cultural complexities within the legal system. The quotation: "The fact is very important in family law...it becomes crucial that someone reads it as that type of culture sees that fact" (LF-8) encapsulates the interplay between structural influences and the agency exercised by legal professionals in interpreting facts within the legal field, showcasing a dynamic negotiation between structure and agency.

> We get by a bit, it is the same parties who, needing to speak with the judicial authority, say: let us bring interpreters, who are then perhaps other citizens on the territory to whom we call. Maybe there is not a professional investment, but an extra-registered one, where we say that the professional figure is paid by the parties, intervenes on the parties' instructions and we include her in our hearings, because we have no other means" (JF-4).

This perspective sheds light on the systemic challenges and underscores the need for a more equitable and supportive framework to bridge the gap between legal procedures and the essential role played by cultural experts in ensuring a comprehensive understanding of cases.

In essence, these interviews depict a complex interplay between legal professionals and cultural experts. While there is a recognition of the importance of cultural knowledge in legal proceedings, practical challenges, including limited utilization of cultural mediators and delays in incorporating anthropological expertise, highlight the need for a more comprehensive and streamlined approach to integrating cultural expertise into the legal decision-making process.

All the themes emerged so far, open to a reflection regarding the constraints of the structure in which actors operate. One lawyer, in discussing family proceedings, acknowledges the structured complexity within the legal field, noting, "Our family proceedings are really, using a negative term that can have a negative connotation, they are bogged down with many figures" (LF-2). This quote underscores the structural intricacies where various roles and procedures contribute to the complexity of the legal landscape. However, the same lawyer also emphasizes the agency of legal professionals in adapting to this complexity, stating, "Our profession is one of continuous study, more than others" (LF-2).
The emphasis seen in this interview excerpt is also reflected in the statements of judges, albeit to a lesser degree and with some differences in positioning between ordinary and juvenile judges.
Indeed, the latter are more open and willing to question themselves and engage in dialogue with various disciplines, thereby connecting to the deeply felt need for continuous learning and improvement within their profession, in response to the changes in society and thus in their work.
This reflects a conscious effort to engage with the evolving demands of the legal field, illustrating the ongoing dialectic between structure and agency as conceptualized by Bourdieu and the concept of habitus—the ingrained dispositions and behaviors developed by legal professionals in response to the structural conditions of their field.

While the legal field imposes structural constraints and complexities, legal professionals demonstrate agency in navigating and adapting to these challenges through continuous study and

professional development. Furthermore, the negative connotations associated with the "bogged down" nature of family proceedings may reflect broader struggles over symbolic power within the legal field, where perceptions and meanings are shaped and contested by legal actors.

Within the rich tapestry of legal professionals' experiences, a lawyer (LF-2) sheds light on the transformative shifts taking place within the legal landscape. She articulates a nuanced perspective, acknowledging the emergence of diverse figures such as mediators, family coordinators, and child advocates: "the medley of figures, including mediators, family coordinators, and child advocates, reflects the institutional changes within the legal landscape".
These roles, in her view, symbolize broader institutional changes, reflecting a heightened awareness among legal practitioners. Importantly, the interviews go beyond mere recognition of these roles, delving into the organizational dynamics that accompany them. The discourse captures the introduction of specialized training and the evolving roles of legal professionals, portraying an industry in the throes of transformation: "the legal profession is undergoing a transformation with the inclusion of new roles, demanding a continuous process of learning and adaptation" (LF-2). She aptly notes that this shift demands a continuous commitment to learning and adaptation, underlining the proactive stance adopted by legal professionals in staying abreast of contemporary demands.
Furthermore, it is recognized the intricate interplay of legal cultures, which exhibit variations across different regions. This recognition accentuates the contextual nuances influencing legal practices, highlighting that the modus operandi of legal professionals is deeply rooted in local contexts.

In essence, the interviews, analyzed through the lens of Bourdieu's theory of the legal field and organizational theories unveil a complex interplay between institutional structures and individual agency within the legal domain. The accounts of lawyers and judges provide a nuanced understanding of the challenges and negotiations within the legal field concerning cultural diversity, emphasizing the complex dynamics between structure and agency in shaping professional practices and outcomes.
Financial constraints, structural gaps, and the recognition of cultural expertise are not isolated issues but interconnected components shaping the experiences of legal professionals.

4.5 Specific Tools for Cultural Comprehension

As we delve into the intricacies of cultural dynamics within the legal landscape of the Milan courtroom, this paragraph focuses on a specific theme— "Tools for Cultural Comprehension". The final main issue, encapsulated within this thematic exploration, delves into the practical approaches and techniques that judges and lawyers might use and need to enhance their understanding and evaluation of the cultural component within the expansive legal domain. The emphasis here lies in illuminating the profound significance that legal experts in Milan attribute to possessing the right tools for navigating the complexities inherent in cases where cultural differences play a crucial role. The thematic analysis of semi-structured interviews unravels a rich tapestry of insights, unveiling a diverse array of strategies employed and needs expressed by these legal practitioners. From the application of cross-cultural communication tools to participation in cultural sensitivity training initiatives, this exploration illuminates the multifaceted efforts undertaken by judges and lawyers to fortify their cultural comprehension skills within the evolving landscape of the Milan courtroom. This scrutiny aims to comprehend and evaluate the cultural element within the broader legal context, critically approaching what emerged in connection with earlier themes.

4.5.1 Linguistic and Cultural Competency

The interviews underscore the significance of cultural mediators as crucial when engaging with individuals from diverse cultural backgrounds. However, challenges were observed, stemming from significant constraints associated with their involvement in legal cases and the lack of standardization in their education and training.

Consequently, the employment of cultural mediators was emphasized as an indispensable tool for a more thorough assessment of cultural factors. Presently, it was noted that they are not fully integrated into the decision-making processes of lawyers and judges. Moreover, the interviews highlight the pivotal role of cultural mediators as indispensable tools throughout the legal process. Their importance was stressed in social service investigations, where their presence could significantly enhance understanding and facilitate early intervention in navigating cultural intricacies, as expressed by LF-12:

> If there were cultural mediators during the social service investigation, not after. This would make a huge step forward. […] If we put in-home educators, if we say that parents have to

> go through parenting support courses, etc., we would need someone to act as a go-between in making people understand what that means, because we then beyond what we write in the measures, we lose the minors, we have no control (LF-12).

Addressing the inclusion of home educators and the mandate for parents to undergo parenting support courses, the need for a mediator to facilitate understanding of the implications beyond written measures was emphasized, underscoring the importance of ensuring comprehension and control over minors in the absence of effective measures.

Furthermore, effective communication emerges as a fundamental tool, with a judge highlighting linguistic and cultural competency as crucial for legal professionals. This involves the use of interpreters and cultural mediators to bridge communication gaps and facilitate understanding. The judges and lawyers also emphasize the need for a strategic and context-sensitive operational approach, indicating that cultural mediators play a pivotal role in the operational phase of interventions, underscoring the importance of a nuanced and strategic perspective in addition to linguistic and cultural tools. Additionally, as highlighted by a lawyer, it is crucial to accurately elucidate the entire procedures and the system within which clients are engaged. In instances where linguistic challenges arise, the mediator should possess the ability to contextualize the information, as stated by LM-7: “When dealing with people from relatively diverse cultures, it is important to explain the system in which we operate.”

Extending this need to courtroom proceedings, the suggestion that mediators can contribute to formulating more pertinent and culturally sensitive questions by judges highlights a specific need for cultural comprehension within legal frameworks, in general. This holistic approach recognizes that tools for understanding cultural elements extend beyond legal knowledge to incorporate human resources, emphasizing the collaborative and interdisciplinary nature of addressing cultural nuances in the legal domain. As expressed by a lawyer:

> I like to work with the perspective of having the maximum tools... using different professionals helps a lot. The ability to use different professional skills is very helpful, first of all, in enriching the professional who is not born knowledgeable anywhere and who certainly has the task of keeping up with legislative changes, the application of laws, court practices, and all that series of issues. But it is certainly a part that helps the person whom you must try to protect because the person you must try to protect must identify and understand what, what needs. And if the professional does not have a somewhat comprehensive culture, not with the perspective of providing support, but with the perspective of understanding what support needs to be given, then it becomes difficult to deal with those people (LF-4).

Furthermore, the interviews stress the necessity for standardized procedures and institutional recognition for cultural experts, as it emerged as a crucial issue when lawyers and judges were asked about the involvement of external figures in legal cases. The acknowledgment of limitations in assessing the adequacy of cultural mediators emphasizes the need for trained individuals with cultural knowledge, possibly from embassies or specific communities, indicating a push towards a more formalized and systematized evaluation of cultural elements within the legal context.

4.5.2 Interdisciplinary Collaboration and Reform of Justice

A crucial theme that emerged during the interviews, which has great importance when dealing with what lawyers and judges flag as the right tools for navigating the complexities in cases where cultural differences play a crucial role, is surely the role of education and training for legal professionals.

The transformative role of knowledge and education takes center stage, as one lawyer underscores the instrumental impact of training sessions and collaborative efforts with experts, namely psychologists, psychotherapists, and professional experts with experience in cultural diversity, as instrumental in broadening legal professionals' perspectives on cultural elements.
This approach reflects an understanding that cultural competence is an ongoing process requiring continuous learning and training, as well outlined as follows:

> I always believe that education, beyond the fact that I am absolutely in favor of introducing specializations in our profession because one cannot be omniscient, should absolutely start from the basics, hence from education. Also, with courses, I would start right from the universities. When I studied law, there was no English exam, exams were not conducted in English. One learned a new language if they decided to participate in Erasmus or had received training of that kind because they had chosen it earlier in parallel with university studies. Today, it is normal to have courses in English, even in the university. I believe that even this aspect of cultural diversity could be part of education, perhaps in 15 years, in our universities, there will be law courses that include this. I hope this happens or at least an exam that one can choose to face in their study plan.
>
> […] Regarding the training of lawyers, we lawyers undergo extensive training; our profession involves continuous study, more than others. The possibility of proposing, even offering training to our colleagues in this regard, depends on how much consensus it would gather from other colleagues. However, I must say that family lawyers […] are sensitive to these issues. Surely, if something like this were proposed, there would be a great response.

> We talk little about cultural diversities even in a European context, but in reality, they are absolutely present (LF-2).

The emphasis on interdisciplinary collaboration, including specialized services such as ethno-psychiatrists, anthropologists, and consultants of the same nationality as involved parties, underscores the importance of drawing upon expertise from diverse fields and it has been stressed by many different lawyers and judges, overall. This collaborative approach is seen, in fact, as an essential tool to navigate the complex interplay between law and culture effectively and the desire for specialized training beyond the conventional legal framework further supports the notion of a broader, more comprehensive approach to legal education and resource allocation, perceived as crucial when such issues are at stake.

Starting with the topic of training, some of the lawyers and judges introduced the issue of judicial reform as a potential moment to introduce possible insights into cultural diversity within the courts. Against this backdrop, the interviewees were questioned concerning the changes, doubts, and opportunities that may arise from justice reform, since it is going to affect the family and juvenile courtroom.

> The specialization of judges should no longer be exclusively national but should become an intercultural specialization […] It's essential to truly understand the context of origin, so having someone trained in that aspect would be helpful. Nowadays, there is a widespread use of specialized websites that, when I did it just five years ago, wasn't as common. Refugee websites provide a lot of material. Still, beyond the material, having a dedicated figure would be beneficial. I believe that including a part of judge training, even for us family judges or specialized judges, where someone assists us during training, would be helpful (JF-6).

The project is to unify the two courts (ordinary family and juvenile) establishing a single court for persons and the family, seen as a potential opportunity by some of the interviewees, especially concerning the need for training, awareness, and institutionalization of certain figures:

> There is this project to unify the two courts (ordinary family and juvenile), now there is a statutory project to unify these two courts by 2024 and to establish a single court for persons and the family. Certainly, this osmosis should facilitate, in my opinion, the attention ... that could be a good opportunity, at the level of reform. […] certainly, that is an area in which training, from this point of view, could do a lot, at the level of awareness and then institutionalization of certain figures. […] It would be necessary to find support figures, some sort of consultants, who could be a professional figure to be used when needed...this is more difficult for the figures we use (JF-4).

However, although most of the respondents did not take a clear position on the justice reform, admitting that they still do not have a clear enough view on it, some of them expressed negative opinions on the limitation of the roles of honorary judges.

In fact, it is foreseen that the new court for individuals, minors, and families is intended to replace the current court for minors (thus acquiring both civil and criminal jurisdiction) and absorb the civil competencies of the ordinary court in matters of the status and capacity of individuals and family, raising some doubts on the part of the interviewees.

The court will be structured with a district section established at each Court of Appeal location and circuit sections established at each ordinary court location within the district (Montaruli, 2021).

The inclusion of honorary judges in juvenile proceedings has been repeatedly emphasized as necessary by European legislation and the rulings of the Constitutional Court and the Cassation Court, identifying the role of the juvenile judge as "proactive," therefore signifying an intent to explore all potential avenues for the success of the project and to implement necessary modifications throughout its implementation. According to Montaruli (2021):

> The attribution of the entire subject matter of parental authority, including proceedings related to extremely serious cases justifying the loss of parental responsibility, and the adoption of impactful and urgent measures under Article 403 of the Civil Code, such as the removal of minors, to the single judge is absolutely not shareable. This solution, which deprives the judge of the safeguards of collegiality and multidisciplinarity, will inevitably result in the risk of making decisions that are not adequately considered or, in the face of extremely serious situations, are not appropriately impactful (Montaruli 2021, p.33).

The "Cartabia" reform has been implemented to delineate the scope and objectives of the expert opinion (CTU), exclusively aiming to equip the judge with technical-scientific tools and information. These resources, coupled with additional investigative elements, empower the judge to make assessments and adopt solutions that best serve to satisfy and safeguard the rights of the parties and minors. Indeed, the reform has specified the role of the CTU and its "institutional" responsibilities, regulating both its approach and goals. For instance, the CTU is now obligated to clearly outline each segment of its investigation, distinguishing between facts observed directly and statements made by the parties. Additionally, the CTU is tasked with grounding its assessments in criteria, methodologies, and parameters recognized and validated by the scientific community. Regarding evaluations of parental competencies, the reform mandates that they are consistently entrusted to the CTU through a well-reasoned decision. The CTU should provide observations on the personality of the parents only when necessary for verifying their actual parenting capacity, always specifying the criteria and methodology employed.

In conclusion, the interviews collectively reveal a nuanced and contextually informed approach to the tools required for lawyers and judges to comprehend and evaluate the cultural element within the broader legal context. This involves linguistic proficiency, cultural mediation, interdisciplinary collaboration, standardized procedures, institutional recognition, specialized training, and the incorporation of experts from diverse fields. The overarching theme is the recognition that a holistic and collaborative toolkit is essential for navigating the complexities of cultural diversity within the legal system, promoting fair and contextually informed legal practices.

4.5.3 The Cultural Test

A few lawyers and judges suggested the possibility of a cultural information text, defined by the interviewees in very general terms as a sort of standardised set of information available when dealing with cultural diversity and cultural practices. When specifically asked about the way such a text might be structured, however, none of the interviewees gave explicit answers and opinions.
Despite the consistent avoidance observed among interviewees when pressed on the specifics of structuring this set of information, the mere introduction of this concept holds significant importance.
When the interviewees were informed of the existence of the so-called cultural test, many of them demonstrated a real interest in such a tool.

The notion of a cultural test, suggested by a subset of lawyers and judges, represents a broader and globally debated issue in legal discourse. Historically, the concept of cultural tests has evolved as a response to the increasing intersection of diverse cultures within legal frameworks. The idea is rooted in the recognition that the intricacies of cultural diversity require a standardized set of information to assist legal practitioners in navigating cases where cultural factors play a pivotal role. The prospect of a cultural test introduces an intriguing dimension to the discourse on cultural comprehension within the legal domain. Globally, discussions on cultural tests have been both prolific and contentious, reflecting the ongoing struggle to balance the need for cultural sensitivity with the demands of legal objectivity. While interviewees refrained from providing explicit opinions on the structuring of a cultural test, its introduction into the narrative underscores its relevance as a contemporary and multifaceted topic, prompting a critical examination of its potential implications and challenges within the Milan courtroom and beyond.

The term "cultural test" refers to a set of questions and assessments that guide the judge in deciding whether to recognize a cultural practice and balance it against other rights. This tool falls within the broader category of balancing tests, used comparatively by many courts to establish consistent standards in resolving disputes. Balancing tests, originating in the common law tradition between 1910 and 1920, have expanded to various jurisdictions, including European states, where they are adopted, for instance, by constitutional courts through tests of reasonableness.
The specific terminology "cultural test" was coined by the Canadian Supreme Court, which introduced the first cultural test in 1996. It should be noted that as early as 1963 in the United States, there were "religious tests" to assess the conditions for recognizing religious practices. Currently, the cultural test is a tool used to resolve disputes arising from claims made by immigrants, foreigners, or national minorities seeking to preserve aspects of their culture. This test, characterized by the inclusion of numerous anthropological issues in the questions under evaluation, aims to proceduralize the judge's reasoning process, ensuring that all relevant issues are considered in the process when dealing with diverse cultures. It is a motivational framework that guides the judge in resolving multicultural disputes and can be adapted across various branches of the legal system, including civil, criminal, administrative, juvenile, and international protection (Ruggiu, 2022).
As it is going to be presented in the concluding part of this work, there have already been some attempts to provide cultural tests for judges and legal experts within the Italian framework, thanks to PON research project concluded in 2023, within the framework of the "Unified Project for the dissemination of the Office for the Process and the implementation of innovative operational models in the Judicial Offices for backlog reduction".
While this area poses potential challenges, as will be explored, there remains significant scope for improvement and future research.

4.6 Conclusions

In summary, our exploration reveals that lawyers and judges, while operating within the bounds of established state law and utilizing available legal tools, are significantly influenced by the distinct characteristics of their professional legal cultures. This dynamic gives rise to specific manifestations of professional pragmatism within their individual practices.

Given the exploratory nature of our research, the ability to provide in-depth insights into the nature of judicial professional pragmatism is limited to initial and unavoidably partial observations. The synthesis of extensive semi-structured interviews with lawyers and judges yields a comprehensive understanding of the profound impact of cultural diversity on the legal landscape. The examination of family and juvenile law domain provides insights into the nuanced influence of diverse cultural contexts on legal considerations. Legal practitioners consistently underscore the challenges in navigating linguistic and communication hurdles, parental capacity assessments, and intricate dynamics within familial relationships shaped by cultural diversity, stressing the importance of the involvement of external figures such as interpreters and cultural mediators, whose roles are however not clear nor institutionalized. Furthermore, the nuanced understanding provided by cultural mediators extends beyond mitigating communication challenges to fostering a deeper appreciation for the cultural nuances underpinning interactions. This insight serves as a foundation for comprehending the intricate interplay between language, culture, and effective communication within legal processes, highlighting the essential role of adaptability and cultural competence in navigating the complexities introduced by cultural diversity within the legal field.

As revealed in our exploration, a comprehensive examination of the concept of culture necessitates a concurrent analysis of the process of culturalization. This involves considering legal culture and the context of the analytical environment to avoid overlooking the simultaneous construction of the "self" and the "other." The dimensions of 'culture as communication,' 'culture as context', and 'culture as norms' become crucial in understanding how judges and lawyers assimilate foreign culture within their own legal culture for processing. These dimensions highlight the intricate interplay between cultural diversity and the varied facets of the legal landscape, emphasizing the necessity for adaptability and cultural competence in navigating the complexities introduced by cultural diversity within the legal field, laying the groundwork for a more nuanced and informed framework for cross-cultural engagement within legal processes.

5. Judicial Decisions: Critical Discourse Analysis and Themes

> Legal reasoning and decision-making is anything but a neutral application of principles and is instead affected by dozens of biases on the part of legal professionals that depend on the personal ethical-political values they hold and the characteristics of the socio-structural context in which they were formed. Not only are judges and lawyers influenced in their conduct by their ideological and political commitments, the law masks this condition of value-bias by positing neutrality and justifying legal outcomes in terms of a formal application of statutes and precedents to specific cases (Deflem, 2008, p.192).

5.1 Legal Documents at Stake: Judicial Decisions

As revealed in this study, culture may enter the courtroom through various avenues, including the judge's understanding, motions presented by lawyers, witness testimonies, statements made by the parties involved, cultural mediation efforts, formal expertise, the creation or procurement of documents and reports, as well as interpretation and translation services.

Acknowledging the importance of scrutinizing judicial decisions in legal inquiry, this work embarked on an investigation into how courts have applied and construed the law in cases involving cultural diversity. This examination, spanning beyond the confines of Milan's courtrooms to encompass the wider Italian legal landscape, involved analyzing judgments at both the substantive and procedural levels. To compile a substantial corpus of decisions for analysis, major legal databases were meticulously searched using relevant keywords. In the initial phase of researching judicial decisions for analysis, a focused attempt was made employing the keyword "Culture". However, this approach yielded only a limited number of relevant judgments. Recognizing the complexity and multidimensionality of cultural influences within legal contexts, the research strategy was subsequently broadened. Additional terms such as "cultural background," "immigrants," "family models", "Religion", and others were explored.

The rationale behind this expanded search was the acknowledgment that while the term "culture" might not always be explicitly mentioned in the texts, there could be related terms implicitly referring to cultural aspects. This broader approach aimed to capture a more comprehensive range of judicial decisions that addressed cultural considerations, even if not explicitly labeled as such.

Subsequently, the scope of the inquiry was broadened to include prominent legal periodicals. Importantly, this analysis did not presume a predefined definition of culture; rather, it focused on

scrutinizing judgments where cultural influences were explicitly acknowledged, whether by the court or the defendant. This approach aimed to explore how judges pragmatically address the concept of culture in their rulings, as opposed to engaging in theoretical discussions on the intricacies of cultural diversity. The scrutiny of judgments offered a valuable means of understanding the perspectives of legal practitioners when grappling with cultural diversity in their caseloads. These documents served as tangible manifestations of legal professionals' viewpoints, shaped by a confluence of organizational contexts and legal culture. While interviews provided insights into individual perspectives and reasoning, the analysis of judgments laid the groundwork for a distinct form of analysis. Indeed, since judgments are texts produced for purposes divergent from the inquiry here at stake, they allow delving deeper into the interpretation and understanding of key categories within this context, namely the concept of culture and cultural and such as the notions of family, children, and childhood.

Through critical discourse analysis, language is viewed as a medium of social construction, with the power to both reflect and shape social realities, identities, and knowledge (Silva Nino de Zepeda, 2022). The choice to utilize critical discourse analysis in this research was intentional, driven by its suitability for the multifaceted nature of the study. Examining the language and discourse present in judicial decisions through discourse analysis emerges as a compelling method to deconstruct and comprehend the judicial perspective and behavior. This approach delves into the profound impact of language on the construction of meaning and its influence on societal behaviors, particularly within legal contexts. It reveals how language can both mirror and perpetuate power dynamics and societal norms, illustrating its role in shaping the interpretation and application of the law. Essentially, this method taps into the inherent characteristics of statutes (laws) and case law, providing an "emic" perspective that captures subjective meanings attributed to various situations (Cohen, Manion & Morrison, 2011), facilitating the exploration and explanation of 'culture' in terms of its internal components and mechanisms. Moreover, conducting a critical analysis of diverse discourses, recognizing them as instruments and manifestations of power dynamics (Cohen, Manion & Morrison, 2011) allows to raise fundamental questions about the functioning of power and its consequent impacts on actions and interactions.

In the context of the dispute, the journey begins with the breakdown of a private bilateral relationship, prompting the involvement of a third-party actor: the public figure of the judge. This shift from a private realm to a public one relies on the expertise of legal professionals. Parties engaging with the judge are required to seek representation from lawyers, independent practitioners who navigate interactions among themselves and with the judge via legal channels. This process, and notably the prevailing legal culture, operates on this fundamental premise.

The judge's organizational isolation becomes apparent as they are expected to handle a wide range of tasks, from basic secretarial duties to notarial verification and adjudication. The extensive structure of the judicial system, with its multitude of vertical and functional components, as well as its intricate procedural regulations, ultimately places the burden of managing the entire system squarely on the shoulders of the individual judge (Zan, 2003).

From a sociological standpoint, the judgment is seen as the culmination of a series of decisions, embodying the result of a process understood as a sequence of specific social actions governed by legal norms, aimed at generating legally significant decisions (Febbrajo, 1995). In this context, the judgment is not only considered as a text or as the expression of a subjectively made decision, but rather as an institutionalized document strongly structured by a technical code. This code is further shaped significantly by the specific situation at hand, the choices of the involved actors, and the tools available to them for determining the facts and qualifying the legal issues.

The judicial decision, akin to the law itself, assumes the role of a linguistic act that not only dictates but also brings about transformative change through its expression. Viewing the court's ruling through the lens of core conceptual categories proposed by the philosophy of language reveals it as a performative statement, indicating that uttering something does not just describe an action; it effectively carries out that action. Therefore, the court's decisions and regulations do not merely correspond to verbal or procedural actions; they encompass both dimensions. Undoubtedly, the judicial subsystem, which refers to the part of a legal system responsible for interpreting and applying the law through the adjudication of disputes, is an integral component of the legal system and emerges as a potent analytical tool. The judicial decision, motivated by the necessity of justification, stems from decisions deeply rooted in legal principles (Barra, 2015). From a functional perspective, Luhmann (1986) highlights the persuasive power of argumentation in decision-making processes. In fact, arguments represent unique modes of communication that articulate the rationale and contribute to reducing the inherent uncertainty surrounding decision-making. Consequently, they wield influence within the judicial system, effectively serving as instruments through which the system convinces itself of the validity of its judgments. Through a discourse analysis perspective in this context, it becomes apparent that actors present arguments that the court interprets, leading to a meaningful interaction infused with specific insights. Analyzing the language used in judicial opinions reveals therefore identifiable patterns of argumentation, framing, and reasoning.

Furthermore, it provides a platform to explore the underlying beliefs and assumptions that inform judicial decisions, deepening the understanding of how broader societal, cultural, and political forces influence legal decision-making, and shedding light on the complex connections between the legal system and other power structures and sources of inequality.

5.1.1 Selection of Cases and Analysis Process

The initial aim of this research was to employ a triangulation of data, incorporating both semi-structured interviews and critical discourse analysis of judicial decisions, to mitigate potential biases and enhance the robustness of the findings. However, several challenges emerged during the data collection process. Specifically, accessing judicial decisions from family ordinary courts proved to be significantly challenging, as they are not consistently cataloged in online databases. Conversely, decisions from the court of cassation, in particular the ones concerning adoptions, were more readily available. This limitation has led to an incomplete implementation of the original triangulation strategy. Yet, it is crucial to note that the analysis of ordinary court decisions might be pivotal, particularly in light of the insights gleaned from the semi-structured interviews.

Therefore, the importance of this analysis lies in using different methods to study the treatment of cultural diversity in the judicial context. Linguistic analysis of court judgments effectively uncovers aspects that may remain in the background during interviews, thus adding a significant layer to this work. In fact, the interviews brought to light a recurring theme that was often understated: the processes of stereotyping and simplification evident in the statements of the interviewees.

Moreover, a notable disparity in judicial approach between ordinary family courts emerged, characterized by a lack of attentiveness and reflexivity among judges, and juvenile courts, where judges exhibit greater openness to considering a broader range of personal factors during case deliberations. Despite the setback in accessing ordinary court decisions, future research endeavors should strive to address this gap to gain a more comprehensive understanding of the cultural diversity dynamics within family and juvenile law contexts.

5.1.2 Critical Discourse Analysis: Why and How

The method utilized for analyzing judicial decisions, as previously mentioned, is Critical Discourse Analysis (CDA). It is possible to characterize discourse as a cohesive expression or a framework of meaning that shapes reality in a specific manner. It goes beyond mere representation of the world;

instead, it signifies, shapes, and establishes social identities, power dynamics among individuals, and systems of knowledge (Fairclough, 1996). The production and interpretation of discourses are influenced by socio-political, historical contexts, and ideologies perpetuated by those in power, including authorities and governments (Wodak & Meyer, 2001), stressing the importance of legal culture, both internal and external.

Critical Discourse Analysis is a critical approach that emerged in the 1980s and was refined mainly by scholars from Western Europe (Wodak, 2011). This methodology has found widespread use in policy analysis research due to its capacity to scrutinize hierarchies, power dynamics, and ideologies within legal frameworks (Wodak 2011; Wodak & Meyer, 2001; Jørgensen & Phillips, 2002).

An essential consideration for CDA is that expressions of social relations, identities, and perceptions of the world are not conveyed neutrally through language. Fairclough's iteration of CDA posits that discourse serves not only to shape social realities but can also be shaped by them. In essence, discourse plays a role in perpetually reshaping social relations, knowledge, and identities as part of social practice, yet it is simultaneously influenced by other structures within social practices (Jørgensen & Phillips, 2002). These social structures are not confined solely to societal levels but also extend to institutional contexts. The objective of CDA is to interrogate these structures and contextualize content within socio-political and cultural frameworks, rather than analyzing a given text in isolation (Mihail, 2023; Jørgensen & Phillips, 2002).

Considering the aforementioned points, the significance of CDA in this thesis can be encapsulated in the understanding that insights into social and cultural thought patterns and values can be gleaned from observing these discursive practices. When contextualized within legal analysis, this distinction from internal legal methodology highlights how discourse analysis elucidates the construction and legitimization of the "surface plane of law" and shifting the focus to the linguistic dimensions of the legal adjudication process unveils the recurring patterns that both legitimize and transform the law.

From a legal standpoint, the judicial decision embodies the manifestation of procedural and jurisdictional legal actions. The procedural acts adhere to the binding regulations of procedural law to initiate the legal process and facilitate the attainment of its objectives within the social and legal framework. On the other hand, the latter declares the will of the law in the specific case.

The decision-making process involves a sequence of interconnected choices, each distinct and diverse but bound by the available decision options. Throughout this process, historical

considerations on relevant facts, evidence assessment, semantic analyses of legal terms, combination calculations for normative statements, and conclusions on both fact and law converge to link events with specific legal hypotheses. Ensuring the document's legal validity requires transparent and verifiable choices for fact-finding and consistent, rational application of evaluation criteria. Ultimately, the arguments presented must justify the various aspects considered in the judgment, which is immediately disclosed during the hearing (Giura, 2010; 2015).

From a sociological standpoint, additional notable aspects of the judgment can be identified in its composition as a structured document containing organized elements that shed light on the characteristics of the situation and the interacting parties within the context of the relevant regulatory framework. The institutionalized nature of this document arises from the specific combination of procedural norms with the factual elements addressed in the process and the actions leading to the decision. Legal jurisprudence aims for an objective interpretation, focusing on the normative content of legal propositions essential for reaching the final decision. Conversely, sociology, in analyzing "law", is not concerned with determining the objective and logically correct meaning of legal propositions but rather with understanding a form of action based on the representations actors hold regarding the meaning and validity of certain legal propositions.

The substantive aspect, which is the essence of the final decision, thus hinges on the selective and partial decisions made by individual actors involved in a given situation. Through their interactions, these actors establish decision-making premises that influence the outcome reached by others. The result of this process, encapsulated in the judgment's text, reflects its distinctive institutional nature. Despite being bound by rules governing the decision, the judge "interprets" events within the parameters set by procedural and substantive norms. This adaptation of content to decision-making conditions in a given case leverages the discretion afforded by those very rules (Pennisi, Giura, 2009).

Hence, the judgment stands as a distinct textual form discussing the legal process—a communication conduit wherein the judge's declared decision emerges as the culmination of a sequence of choices influenced by information from both external and internal sources within the legal framework, guided by adherence to rules. By establishing rules governing the introduction of themes, the admission of individuals, and the behavioral motivation of each party involved, the process is defined and gains a certain degree of autonomy, distinguishing it from the "general history" until a decision is reached.

When examining this concept in relation to the verdict, viewed as the outcome of a process characterized by these traits, the key aspect to explore is identifying, within the verdict, those

additional elements that, alongside generalized legal norms, give sociological significance to the document from temporal, material, and social standpoints (Giura, 2015).
As a convergence of diverse subjectivities representing different interests within the social system, judicial decisions serve therefore as a significant magnifier of the mechanisms and processes of action. Despite being framed within the legal context of specific phases and timelines of the process, they provide an abundant source of information (De Felice, Giura, 2016).

What therefore emerges as fundamental in this work is that the judgment can be seen as a means of communication linking internal legal culture with external legal culture, while also serving as a tool for social control over institutional action and its configuration within the local context.
As pointed out by De Felice and Giura (2016), the judgment serves as both a resource and a product of three distinct systems that converge within it. Specifically, this involves:

- The institutional dimension, concerning the legal classification of the event;
- The local dimension, involving the judge's evaluation of facts and law in subsequent stages of judgment ("reasoning" as a source of knowledge and decision control);
- The material dimension, where the judgment provides general models for interpreting case facts and individual behavioral models, potentially serving a labeling function.

Legal texts typically adopt an objective and neutral tone, often emanating from a position of legal authority or expertise, which obscures their discursive and constructive essence.
The objectivity of a verdict is determined by both its structure and content.
The structure encompasses the voices utilized in the verdict and how their authors or instigators are portrayed.
In this context, the structure serves as a representation of the legal adjudication process and a governmental body, holding significance due to its ability to lend authority to arguments and potentially portray the author as an objective, impartial entity. However, this structure conceals any influence of historically and culturally specific factors on the judge's life experiences, which are essential tools for the judge. Similarly, intuition, while valuable in situations where logical arguments fall short, can also be subject to the same critique.
After presenting the methodology at stake, in this last chapter the analysis delves into both the composition of the judicial decision texts and their interpretation and more than juxtaposing cases from the ordinary and Cassation Courts, it seeks to identify general tendencies in assessing and understanding cultural diversity within legal cases under consideration. The aim is therefore to add

a layer to the semi-structured interviews, focusing on the language of judicial decision and identifying themes and implications and possible consequences of such a use of the language.

5.2 A Breakdown of Selected Decisions in Italian Courts

Before delving into the detailed analysis of judicial decisions, it is crucial to provide an introductory overview of the sampled decisions and their significance. Understanding the composition and scope of the selected sample is paramount for contextualizing subsequent analyses and interpretations. The description of the sample is here important not only to outline the diversity of cases examined but also to stress the implications and the limits of the sample involved, as anticipated at the beginning of the chapter.

By delineating the categories and sources of the decisions, such as the Court of Cassation and various lower courts, as well as specifying the subjects under scrutiny, including adoption, religious education, separation, divorce, kafalah[39], and child recognition, this introductory section aims to establish a solid foundation for the ensuing analytical exploration.

Tab. 1 Sample of judgements by court level

	Family	Juvenile	Total
First Instance	4	1	5
Second Instance	1	-	1
Court of Cassation	-	-	31
			37

This graph depicts the total number of judgements taken into consideration, namely 37, made between 1999 and 2023, identifying them according to the court level.

[39] The idea of kafalah, which has its roots in Islamic law and custom, provides children who are not biologically connected to their caretakers with an alternate kind of support and care. In contrast to adoption, which entails the formal transfer of parental rights, kafalah creates a legal guardianship relationship while preserving the child's biological lineage and inheritance rights. The child keeps their original name and familial links, but the kafil (guardian) is responsible for their upbringing, welfare, and education. Kafalah emphasizes the need of providing care for vulnerable children within the society and is frequently regarded as a kind of charity and kindness. It offers a framework for showing compassion, solidarity, and social responsibility to underprivileged children while honoring their cultural and religious identities. It is a reflection of Islamic values and it provides a caring response to the needs of abandoned or orphaned children and serves as an example of the compassion and unity that are fundamental to Islam.

As it is presented in the table below, in the analysis of the decisions, a total of 17 decisions concerning adoption were examined, predominantly originating from the Court of Cassation, with only one exception (the Court of Milan). Additionally, the study encompasses 5 decisions addressing religious education for children, sourced from both the Court of Cassation and various ordinary and second-grade courts (Milan and Novara). Furthermore, 7 decisions regarding separation and divorce were included, spanning both ordinary and Cassation courts. The analysis extends to 5 decisions concerning kafalah, exclusively sourced from the Court of Cassation, and 2 decisions relating to the recognition of a child. Notably, in all cases from the Court of Cassation, the section involved was consistently the first section of the court, which addresses all the subjects involved in the decisions collected.

Tab. 2 Subject of the Judgments

	Adoption	Religious Education	Divorce	Child Recognition	Kafalah
Ordinary Court	1	1	3	-	-
Court of Appeals	-	1	-	-	-
Cassation	17	3	4	2	5

After presenting the sample of judgments involved in the research, it becomes crucial to explore the distinct manners in which family law and juvenile law intersect with the study of cultural diversity within legal frameworks. By delving into these dynamics, the aim is to gain deeper insights into the ways in which the law addresses and accommodates cultural diversity while ensuring equitable outcomes for all individuals involved. Moreover, it is crucial to examine which principles, fundamental values, and legal frameworks guide interactions between people and/or children in these contexts, in order to provide a more comprehensive understanding of the complexities involved.

5.2.1 Family and Juvenile Law

Parenthood encompasses a range of practices that define the educational and emotional bond between parents and children, making it a significant aspect of individual expression within social structures, notably the family (Article 2 of the Constitution). It is intertwined with the parental duty

and right to provide for the upbringing and education of their children (Article 30 of the Constitution), facilitating the transmission of core identity values across generations. Additionally, it entails a corresponding obligation of the State to safeguard the welfare of minors and support childhood (Article 31 of the Constitution).

Given its multifaceted nature, parenthood frequently becomes a focal point for assessment and scrutiny by both social and judicial authorities. This occurs in various scenarios, such as when suspicions arise regarding potential criminally abusive behavior by parents towards their children, or when investigations are needed to determine a minor's welfare, potentially leading to considerations of external custody or adoptability. Moreover, interventions aimed at bolstering parental capabilities in cases of "fragile parenthood" through educational and social support mechanisms are common, as are evaluations related to family reunification requirements.

The Italian legal framework governing the interactions between parents and their underage children is guided by the principle of prioritizing the best interests of the child.
Its primary aim is to safeguard the well-being of minors, ensuring their protection and nurturing their growth, ultimately facilitating their successful integration into society as adults.
Consequently, there is a notable emphasis placed on fundamental values and a heightened degree of legal and judicial involvement compared to matrimonial law. This is achieved, in part, by mandating the application of Italian law to safeguard minor children (as per Article 37 bis of Law No. 184/1983 and Article 42 of Law No. 218/1995). Acting as the forum law, it establishes a stronger connection with the minor, thereby better serving their interests.
Therefore, when foreign families are involved, unlike matrimonial law, the focus here is not solely on the right to apply one's own national law in family matters, but rather on ensuring that the application of the law of the habitual country of residence respects the cultural and religious nuances of the parties involved (Long, 2019).
Another outcome stemming from this distinctive approach is the recognition that, as minors are individuals in the process of formation, a forward-looking assessment plays a central role in determining the scope of their rights. For instance, the parental right to provide religious education to their child takes a backseat to the child's right to develop their own religious convictions. Consequently, this right cannot be exercised in a manner that obstructs the child from gaining the critical faculties needed to make future religious decisions autonomously and with awareness, including through exposure to diverse religious perspectives. Furthermore, it is essential to acknowledge that the distinct status of minors, along with their inherent nurturing within the familial setting, demands that any public response to culturally or religiously biased parental

behavior affecting the offspring also considers the impact of sanctioning the parent on the minor's circumstances. Therefore, such intervention should not inflict greater harm on the minor than they would experience under the care of the parent (Long, 2019).
Regarding juvenile law, a considerable body of Italian jurisprudence concerning the topic revolves around the influence of cultural factors in assessing the harm experienced by the minor child due to a parent's behavior. Every underage individual, being a human being, is entitled to the safeguarding of their cultural and religious identity (refer to Articles 8 and 14 of the UN Convention on the Rights of the Child, and, concerning minors in foster care and adoption, Article 1, paragraph 5 of Law No. 184/1983). Moreover, the State is obligated to ensure that minors belonging to "ethnic, religious, or linguistic minorities" have the opportunity to maintain their cultural life, practice their religion, or use their language alongside other members of their community (as stated in Article 30 of the UN Convention on the Rights of the Child). In cases where the minor lacks the capacity for discernment, their right to cultural (and consequently religious) identity essentially aligns with the parent's right to educate them in line with their own values, including religious ones, provided that this education does not employ "totalizing" methods that hinder the acquisition of critical tools necessary for making independent choices in the future. However, if the minor has the capacity for discernment, it is assumed that they are capable of making choices that are adequately considered (though, like anyone else, subject to potential changes over time) and, therefore, warranting protection.

The legal framework includes procedures aimed at limiting (Article 333 of the Civil Code) or revoking (Article 330 of the Civil Code) parental responsibility, as well as determining adoptability status (Articles 7 and 8 of Law No. 184/1983), that means that the State possesses two primary protective measures in cases where familial relationships are deemed harmful and the well-being of children is at risk: foster care and/or the adoption of the minor. In this domain, institutional practices engage with three scientific disciplines – legal, medical-psychological, and socio-educational – to evaluate parental abilities and the welfare of the child within their family.
This is done to comprehend the progression of familial bonds considered pathological or undifferentiated and to offer fresh avenues of growth to minors facing compromised psychosocial development or to deviant adolescents.
For quite some time, sociological literature has emphasized the connection between economic, social, and cultural poverty and family neglect and some legal and psychological experts have pointed out the challenges and shortcomings in evaluating parenthood, particularly when cultural factors come into play (Taliani, 2012). The primary "diagnostic errors" or "cultural

misunderstandings" (Long, 2015) often arise in cases involving the assessment of child abandonment by foreign parents and the potential initiation of custody or adoption proceedings. In these situations, certain instances of "fragile parenthood", largely stemming from the difficulties of migration experiences and the resulting marginalization upon arrival in the host country, as well as some practices rooted in the cultural context of origin, are sometimes misinterpreted as pathological or indicative of parental disinterest in their role. Notably, as pointed out by Lang (2019), recent judgments from the European Court of Human Rights condemning Italy for removing minors from migrant families underscore the need for authorities to demonstrate heightened attention in cases involving vulnerable individuals like migrants. This entails implementing targeted social assistance and concrete measures to prevent the separation of parents and children (Barnea and Caldararu v. Italy, June 22, 2017; Akinnibosun v. Italy, July 16, 2015; Zhou v. Italy, January 21, 2014; Todorova v. Italy, January 13, 2009).

For what concerns family law, instead, the Italian legal framework governing couple relationships (including marriage, civil unions, and de facto cohabitation) is rooted in the principle of formal equality (Article 3, paragraph 1 of the Constitution). Under this principle, it is assumed that partners are capable of independently addressing their own interests and are allowed to manage the terms and consequences of their relationship breakdown autonomously.

Additionally, it mandates equal legal treatment for partners, irrespective of their gender (Article 29, paragraph 1 of the Constitution; Article 143, paragraph 1 of the Civil Code). Complementing the principle of formal equality, the principles of substantive equality (Article 3, paragraph 2 of the Constitution), and the respect for the "dignity" of the human person (an implicit requirement for the acknowledgment of inviolable human rights under Article 2 of the Constitution) may necessitate differentiated public interventions, particularly to safeguard partners facing "vulnerability" in certain circumstances (Long 2019; Pocar, Ronfani, 2001).

Diverse matrimonial and family frameworks originating from the cultural and religious contexts of people's home countries may *clash*[40] with the laws of the receiving country, particularly if they are at odds with its legal principles. In the context of the Italian legal system, this clash arises when practices contradict the principles of equality, protection of fundamental rights, and human dignity. Consequently, it falls upon the judge to resolve such conflicts between cultural principles by invoking the general clause of public order, whether at the domestic or international level.

[40] I employ the term "clash" in this context due to its prevalent usage in literature concerning these matters, despite acknowledging potential interpretations and connotations that I may not endorse. While recognizing varying cultural and legal perspectives on topics like marriage, for example, I find that the term "clash" suggests an overly rigid and simplistic understanding of these concepts.

Regarding family matters, international public order encompasses the collection of principles aimed at safeguarding these rights, as acknowledged by the Italian Constitution and the supranational legal community. This includes, notably, the jurisprudence of the European Court of Human Rights and the Court of Justice of the European Union. Within family law, which notably reflects the legal ramifications of a multicultural society, the aforementioned issues acquire distinct characteristics and invite solutions tailored to its specific requirements: reconciling cultural differences while also ensuring protection for the vulnerable parties within familial relationships (Montinaro, 2021).

Whether it concerns family law or juvenile law, what is certain is that a widely acknowledged principle dictates that judges ought not to rely on their individual expertise or personal understanding. The only exceptions to this rule pertain to widely recognized facts that require no substantiation.

This principle signifies that judges are precluded from incorporating external knowledge, be it cultural or technical-scientific, that they may possess incidentally due to personal interest or formal education, into the legal proceedings (Civinini, 2021). Certain situations necessitate a foundational understanding. Some judgments should be grounded in fairness, while others should be exercised through discretionary powers concerning a primary interest; specific technical or factual knowledge should guide yet other rulings. Competent judges require knowledge beyond legal expertise, which they can acquire through specialization within their judicial role (such as family or juvenile court judges), repetition (making decisions based on similar case facts), and specific training. The knowledge gained through professional practice might be considered as "mirrored technique", denoting the structured experience that a judge accumulates in a field unrelated to their legal education, by repeatedly encountering events and phenomena pertinent to that field while adjudicating (Civinini, 2021).

5.3 Judicial Decisions: Culture Within the Texts

> The enthusiasm for origins is fueled by a sense of fear provoked by encountering the other - not always material. At this point, it is a matter of preferring oneself to others who, in any case, are not at all as worthy as we are, and ultimately choosing objects that tend to resemble us. We are therefore facing an era of violent bouts of narcissism. In this context, the imaginary fixation on the foreigner, the Muslim, the veiled woman, the refugee, the Jew, or the Negro serves defensive functions. It is not wanted to admit that in reality our self has always been constructed in opposition to the other - a Negro, a Jew, an Arab, a foreigner that

> we have internalized, but in a regressive manner - that deep down we are made up of various borrowings from foreign subjects and that for this reason we have always been beings on the border: precisely what many today do not want to admit (Mbembe 2022, p.34).

In examining judicial decisions within the context of cultural diversity, it becomes imperative to scrutinize the underlying cultural contexts inherent in these rulings.
This section embarks on a nuanced exploration of the cultural backdrop permeating the sampled decisions and through the identification and analysis of cultural contexts embedded within the judicial documents, the aim is to unravel the multifaceted layers of diversity as they manifest within legal proceedings. By delving into the representation and portrayal of cultural diversity within these documents, the aim is to elucidate how the intricacies of diverse cultural backgrounds are navigated and interpreted within the judicial realm.

Before delving into the analysis of the single judicial decisions, it is interesting to take a brief preliminary look at the central theme of this work: culture. In fact, before analyzing the contents of the judgments in detail, a reconnaissance was made regarding the presence and recurrence of the term culture, which in fact guided the search within the databases and legal journals, considering factors such as cultural identity, practices, and beliefs.
In the examination of the judicial decisions considered, it was observed the usage of the terms "culture" and “cultural” appeared approximately 3 times per document on average. Alternatives of the term "culture" varied in context, ranging from discussions on cultural identity and diversity to considerations of cultural influences on familial relationships and legal proceedings.
In several instances, the concept of culture referred to the cultural heritage and identity of individuals involved in legal proceedings, underscoring the issue of respecting and preserving one's cultural background within the legal framework.
In numerous cases, the term culture was intertwined with discussions on religious practices, societal norms, and familial relationships, reflecting the influence of cultural factors on legal interpretations, especially concerning issues like religious freedom and familial conflicts. Moreover, the term culture also appeared in the context of legal implications and interpretations, where cultural norms intersected with legal frameworks, showcasing the challenges of reconciling cultural beliefs with legal principles, particularly regarding issues such as gender roles and domestic relations.

In this part of the analysis, efforts have been made to categorize the different ways in which culture and its facets elements manifest and are delineated within the texts of the judgments. While achieving a clear and precise division of the various arguments may not always be feasible, attempts have nonetheless been undertaken to discern thematic classifications, albeit often rudimentary and intricately interconnected.

Beginning with an exploration of the cultural context surrounding marriage, these decisions delve into specific geographical regions and foreign legal frameworks, shedding light on cultural norms and delineating gender roles within familial structures, unraveling the complex interplay between cultural beliefs and family dynamics. Within this discourse, interpretations of gender roles unveil traditional norms entrenched within diverse cultural milieus, further underscoring the need for legal frameworks to adapt and consider cultural diversity. Additionally, considerations extend to individuals' cultural backgrounds, fostering discussions on integration, sensitivity, and adaptation within multicultural societies.

Notably, cultural identity emerges as a pivotal aspect, shaped by religious practices, ethnic backgrounds, and geographical contexts, thereby influencing individuals' behaviors and decisions. Central to these deliberations is the acknowledgment of the imperative for cultural mediation and understanding within legal proceedings, accentuating the necessity of cultural sensitivity in navigating diverse cultural landscapes.

5.3.1 Cultural Background: Family Models and Cultural Mediation

As previously pointed out, in the realm of juvenile law, a considerable portion of Italian jurisprudence concerning this matter focuses on the influence of cultural elements in determining the "harm" experienced by a minor child due to parental behavior (Long, 2018; Morozzo della Rocca, 2012).

The legal framework encompasses procedures aimed at either restricting (Article 333 of the Civil Code) or terminating (Article 330 of the Civil Code) parental responsibility, as well as determining adoptability status (Articles 7 and 8 of Law No. 184/1983).

What emerges from the analysis of judgments related to these issues is primarily an application of the concept of culture and cultural practices closely linked to family lifestyles and to the use (or lack thereof) of a cultural mediator and/or translator.

Concurrently, Bourdieu's theory delves into the subtle yet pervasive ways in which the State exerts its influence, particularly through symbolic violence embedded within discursive constructions.
Bourdieu (1994) suggests that the influence of the State extends beyond external institutions, penetrating into individuals' beliefs, mental frameworks, and thought processes.
For instance, he highlights the family as a prime arena where the State's symbolic power is most pronounced.
This influence operates on both objective and subjective levels: through social structures that shape and validate familial norms, and through ingrained mental structures and cognitive patterns within individuals.
Bourdieu's analysis underscores how the State exercises symbolic violence by shaping discursive constructions, such as the prevailing notion of the "normal family," which not only reflects but actively constructs social reality. In this sense, the family is not merely a descriptive term; it functions as a collective construct that molds collective reality, serving as a potent symbol of State influence.

> Thus, the family as an objective social category (structuring structure) forms the basis for the family as a subjective social category (structured structure), a mental category underlying countless representations and actions (such as marriages) that contribute to reproducing the objective social category. [...] Nothing appears more natural than the family: this arbitrary social construct seems to align itself with naturality and universality (Bourdieu, 1994/1995, p.125).

Considering the understanding and application of the concept of culture closely linked to family lifestyles and to the use (or lack thereof) of a cultural mediator and/or translator, some cases particularly emerged.
An example is the case that involved the Juvenile Court of Rome declaring two minors adoptable, appointing the Mayor as their curator, and prohibiting contact with the parents.
Custody was confirmed to social services, with parental authority suspended. Despite the mother's appeal being dismissed, she sought recourse in the Court of Cassation, and her grievance centered on the violation of parental rights to complete and active involvement in the proceedings.
This stemmed from their inability to participate in key investigative acts and the absence of linguistic interpretation or cultural mediation to facilitate interaction with the social workers involved in the process.
With the decision of the Corte di Cassazione n.16175 (07/2014):

> Also relevant is the peculiarity of the procedure under examination regarding the difficulty for the mother and her relatives to cope with an objectively challenging situation in a foreign country where they only have *rudimentary knowledge of the language* and where there are significant *socio-cultural differences* compared to their country of origin. From this perspective, the criticism of inadequacy of the procedure for not providing assistance in the recovery plan of parental rights with the *necessary cultural mediation support*[41] for a fruitful interaction between the mother, her family context, and the social service operators and community leaders where the minors lived seems well-founded.

In this case, emerges the inadequacy of the procedure and the strict relation of culture with the linguistic sphere, besides specific attention to the issue of interaction between two distinct cultural backgrounds of reference. In fact, as already emerged through the analysis of the interviews in the previous chapter, the cultural element emerges prominently in relation to linguistic and contextual aspects, often identified as a fundamental (if not sometimes the only) element to consider when dealing with people from other countries, both European and non-European.

Although the terms used in the judgments are often reductionist and objectifying (as will be further explored in the second part of this chapter), it must be noted that this issue is indeed of primary importance and forms the basis for any further analysis. The essential condition, pivotal for the actual accessibility of the defensive safeguards provided by the legal system, lies in overcoming the language barrier that obstructs non-native speakers from exercising their rights within the legal process, ensuring an equal footing with native Italian speakers. Furthermore, the principle of substantive equality, outlined in Article 3, paragraph 2, of the Constitution, underscores the necessity to eliminate all impediments that hinder equitable access to legal rights, including the lack of proficiency in the Italian language for foreigners.

The absence of a translator in legal proceedings, exacerbating language barriers, not only constitutes institutional violence but also reflects the dynamics of power within Bourdieu's theory of fields, in which power is intricately tied to linguistic capital, where mastery of the dominant language—Italian, in this context—affords individuals greater access to legal resources and influence within the legal system. As said by Bourdieu: “Let's consider language, a field where symbolic domination is exercised in the most visible manner” (www.caffeeuropa.it). By failing to provide translation services, the legal field perpetuates asymmetrical power relations, disadvantaging non-Italian-speaking individuals and reinforcing the dominance of those who possess linguistic capital (Bourdieu, 1970).

[41] In all excerpts cited from the judgements, emphasis is added.

Staying on the emergence of the cultural element related to the importance of linguistic and cultural mediation, the case of Cassazione Civile n. 21110 (10/2024) presents a compelling examination of the intersection between legal procedures and cultural factors within adoption proceedings. At its core, the case centers on the appellants' contention that the judgment under appeal and the entire proceeding are null and void due to procedural inadequacies, notably the lack of translation into a language known to the parents.

In fact, when necessary, the involvement of interpreters and technical advisors—such as intercultural mediators, cultural anthropologists, and transcultural psychologists—becomes imperative.

The Court of Cassation echoed this sentiment when it overturned the declaration of adoptability for a Bengali minor, citing insufficient attention to linguistic issues and the country of origin by the court-appointed technical consultant. The consultant's misidentification of the parents' nationality as Sri Lankan instead of Bengali and reliance on a cultural mediator incapable of effective communication with the parents, besides an evident failure to consider crucial socio-cultural aspects, including the environment of origin of the parental couple and the influences of different cultural and educational models, were in fact crucial factors in this decision.

In response to these grievances, the judge grants the appeal, highlighting the unreasonable restrictions placed on the parents' access to their child and the inadequate attention given to linguistic and cultural considerations.

> With the first ground of appeal, it is argued that the judgment under appeal and the entire proceeding (Article 360 of the Italian Code of Civil Procedure, No. 4) are null and void due to the *lack of translation* into a language known to the parents. Furthermore, the appellants complain that the court-appointed expert did not take into account the observation of the parental couple and the child lasting over a year and carried out by Dr. [...] from the Child Neuropsychiatry service, as well as the evaluations she expressed. The same court-appointed expert did not consider the *socio-cultural aspect*, the *environment of origin* of the parental couple, and the influences of *different cultural and educational models*, to the extent of even confusing the area of origin of the present appellants, defined by the court-appointed expert as Sinhalese instead of Bengali.

The judge grants the appeal stating:

> The social services have unreasonably and disrespectfully restricted the timing and manner of meetings, making it very difficult for parents to establish a relationship with their child, who was placed in a community at birth. There has been little (one might even say none at all) attention, particularly from the court-appointed expert, to *linguistic issues and the*

> *country of origin* (the court-appointed expert showed a lack of awareness of M.'s parents' nationality, referring to them as Sinhalese instead of Bengali, and utilized a cultural mediator incapable of adequately communicating with the parents).

Interestingly, alongside the language barrier and the mistaken identification of the country of origin, the judgment also introduces varying cultural and educational models as factors to consider, underscoring the importance of assessing the cultural aspect not only linguistically but also in shaping family and educational frameworks, which emerges as crucial factor also in many other cases analyzed.

An example is Cassazione n. 26204 (11/2013), in which the court grapples with the nuanced considerations of cultural identity and familial structures, particularly concerning the upbringing and welfare of a minor. The crux of the matter lies in the court's evaluation of the appellant's cultural background and its relevance in determining parental capacity and the best interests of the child. Specifically, the case highlights the tension between the European single-family model favored by the Court of Appeal and the cultural norms and values of the appellant.

> In the second ground, the flaw in reasoning regarding the disputed and decisive fact concerning the minor's abandonment and the mother's parental incapacity is asserted, as the Court of Appeal merely opted for a family situation deemed better for the minor, with an assessment based on a greater appreciation for the *European single-family style compared to the culture of the appellant*. This assessment relied on judgments from the technical consultancy that are neither agreeable nor relevant to the subject under investigation. […]
>
> In the fifth ground of appeal, the unconstitutional illegitimacy of Law No. 184 of 1983 is claimed, in relation to Articles 2 and 24 of the Constitution, for failing to provide for the mandatory *participation of the cultural mediator and interpreter* in the procedure aimed at declaring abandonment and adoptability when non-EU foreign citizens are involved. This figure would enable the judge to *understand the culture and family models of reference* for the purpose of as objective an assessment as possible.

In response, the judge addresses such indications by replying:

> While priority must be given to the child's interest in balanced and serene growth, the subjective and objective condition of the parent and their suitability should not be evaluated on par with a judgment concerning the host family. An obvious violation is found in the final comparison made in the contested judgment between the *family model* of the appellant, based on a broad conception of the solidarity duties arising from kinship ties, and the nuclear family model *typical of Western countries*. The child's right to live, grow, and be educated within their own family aligns with the right to respect their *cultural identity* and that of their parents.

> The preference for a family model different from that proposed by the appellant (returning to Kenya to receive support, including financial support, from their relatives, especially the maternal uncle) cannot have any bearing on a decision aimed solely at ascertaining the irreversible condition of the child's abandonment by the parents. In this case, on the contrary, a plan for inclusion has been proposed, which may be contested on its merits if the feasibility conditions are not indicated or shared, even considering the parent's subjective suitability to fulfill their role but not due to *culturally oriented choices*.

Parental inadequacy and culture meant as a *clash* of family models, rooted therefore in cultural factors, emerges as a fundamental element even in other crucial cases.

Through the judgment of the Court of Appeal of Genoa No. 96/2022 deposited on 30/12/2022 (unfortunately not available), the Juvenile Court of Genoa declared the adoptability status of a girl. In the text of the judgment of Cass. Civ. 8/11/2023 n. 31057 emerges:

> With the first ground of appeal, the violation or erroneous application of Law No. 184 of 1983, articles 1, 8, and 15 is alleged, with reference to the declaration of paternal unsuitability as based on his "*cultural background*." The appellant laments that the Court of Appeal, in upholding the first-instance judgment, based the *assessment of "parental unsuitability" on the so-called cultural factor* and complains that the declaration of abandonment and adoptability of the minor was made in complete absence of the prerequisites outlined in Law No. 184 of 1983, article 15, letters a, b, and c. [...] As previously explained, the trial judge, in determining the adoptability status of a minor, must: a) ascertain the actual and current possibility of parents' recovery, both concerning economic-housing conditions, without employment status or income being discriminatory factors, and concerning mental conditions, the latter to be assessed, if necessary, through expert evaluation; b) extend such verification to the family unit, assessing the concrete ability to support parents and develop relationships with the minor, even if currently lacking [...] c) where necessary, utilize a *cultural mediator*, not to address linguistic deficits, but to bridge the gap between vastly *different family cultural models*, which, if not overcome, hinder an adequate evaluation of parental capacity.

The case of Cassazione civile n. 3947 (29/02/2016) revolves around a judicial decision regarding the custody and welfare of a child, with the focal point being the mother, regarding her parental capabilities and her ability to provide a stable and nurturing environment for her child. The judgment outlines a series of evaluations conducted by social services, medical professionals, and court-appointed experts to assess the mother’s psychological well-being, parenting skills, and the quality of her relationship with the child. According to the judgment, these assessments reveal persistent challenges, including difficulties in adapting to Italian society, managing her emotions, and establishing a healthy bond with her child. Ultimately, the court determines that the child's best interests lie in being placed in a stable and supportive family environment, given ongoing struggles

and the potential risks to the child's well-being. Within the text, different kinds of references to the cultural contexts emerge:

> The personality characterized in a referential and irritable sense within a problem of acculturation, where *difficulties related to ethnic data* were mistaken for racist elements and where the spirituality of the woman led to further *integration difficulties*. The court-appointed expert had noted that "this set of data partly limits the parental capacity, presumably not so much for the child's material care, but concerning the actual possibility of adequately developing the minor in this *cultural environment*" [...] "the path of awareness where responsibilities are at least shared is therefore very long and hardly compatible with the evolving needs of the child in this *social environment of belonging*" [...] As for the reports of the National Institute for the Promotion of the Health of Migrant Populations of 19 and 23.9.2014 produced by the appellant, they emphasized the difficulties faced by Z., despite many years in Italy, in understanding the *values of the cultural context* in which she was placed, highlighting that our legal system, as noted by the court-appointed expert, placed a decidedly different emphasis on the rights and protection of the child, not conceived as an undifferentiated *expression of the maternal*.

In the judgment, the concept of "culture" is utilized to underscore the challenges faced by the mother in integrating into Italian society and comprehending its values, and her difficulties in adapting to the cultural context are highlighted as contributing factors to her incapacity to provide adequate care for her child. In this case, it is presented the struggle to navigate societal norms and expectations, which are indicated as fundamentally different from those of her native country, Cameroon.

In all these cases, the court's ruling critiques the comparison and contrast between family paradigms, namely the appellants' family model (for example said as rooted in a broad understanding of solidarity duties from kinship bonds), and the family norm prevalent in Western societies, underlining the significance of the appellants' cultural identity and familial context. Unfortunately, accessing the judgments of both lower and appellate courts would have been illuminating to comprehend firsthand how such assessments were rendered and to better contextualize the words of the judges of Court of Cassation. Nevertheless, it is intriguing to observe the judges' well-intentioned approach through their discourse, while criticizable from other perspectives.

In fact, the judgments introduce pertinent themes, initiating an examination of cultural issues that necessitate a nuanced understanding and in-depth analysis. However, it appears to depict family models in overly rigid terms, lacking critical examination, as will be elucidated further in the section closely linked to the Critical Discourse Analysis in the subsequent part of this chapter.

In conclusion, what emerges when dealing with cultural background related to family models and in strict relation with cultural mediation and translation, is a quite complex and critical framework. Among the challenges noted in assessing foreign parents, several issues stand out: first, there is a tendency to focus on the parent's interactions with social workers rather than on their relationship with their child[42]; second, there's often a mismatch between those evaluating parenthood (the observers reporting on the facts) and those delivering support services (the service providers), leading to mutual suspicion and uncertain intervention outcomes (Anostini et al. 2021); third, migrant parents often have limited understanding of internal institutional child protection systems, leading to misunderstandings, especially when judicial intervention or placement in protective communities follows a request for help from the parent (Voli, Visentin, 2015); fourth, meetings between foreign parents and their children in "neutral spaces" can hinder rather than facilitate the parent-child relationship due to time constraints and language restrictions (Beneduce, 2014); fifth, difficulties related to marginalization or socioeconomic factors are sometimes pathologized instead of being addressed as cultural differences (Taliani, 2012); finally, the description of behaviors of foreign parents can be overly harsh and stigmatizing[43].

5.3.2 Religious Identity: Education of Children

As previously highlighted, through the judgments analyzed, cultural identity emerges as a pivotal aspect also when shaped by religious practices. Religious affiliation and concerns can be transformed into a sort of universal key for political and normative discourse, serving as a legitimate means for asserting claims and opening the doors of institutional acceptance of cultural diversity.

Conversely, religion has consistently positioned itself—drawing upon the political framework of Western modernity—as an alternative and competitor to the state. This dynamic confers upon it a form of inherent authority, inscribed within established institutional frameworks (such as religious freedom) embedded in constitutional language and capable of activating effective protective

[42] For example, in the case of February 6, 2013, n. 2780, the Civil Cassation Court, Section I, affirmed the adoptability status of a Nigerian child whose mother was a victim of trafficking. This decision took into account the mother's limited cooperation with social services and her tendency to distance herself. The issue of inadequate collaboration between parents and services was similarly addressed in a case handled by the European Court of Human Rights, in Akinnibosun v. Italy, IV Section, on July 16, 2015.

[43] Certain authors cite passages from reports by social workers wherein phrases like "the woman moves like an animal" are employed, or, in efforts to maintain complete objectivity in conveying information, statements made by foreign parents are transcribed exactly as pronounced, often in distorted Italian (petit-nègret) due to language barriers, subtly portraying the parent as perpetually childish and struggling. For further discussion on this topic, refer to Taliani (2012).

mechanisms, such as judicial review. The advantage conferred by the ability to clothe cultural assertions in religious garb—bringing with it an inherent intertwining of traditions, personal histories, and beliefs—further enhances its position.
Consequently, contemporary cultural dialogues and conflicts often manifest as religious-based discussions and disputes, enabling cultural claims to find argumentative grounding and institutional legitimacy within religious contexts.
It is this amalgamation of factors that renders many of the challenges stemming from contemporary multicultural societies resistant to classification when approached from an ostensibly neutral 'secular perspective'.
Instead, it necessitates an acknowledgment of the religious complexity inherent in any political decision-making process (Ricca, 2023).

In this sense, an interesting example involves a comprehensive judgment from the Italian Court of Cassation (Cassazione civile sez. I - 24/05/2018, n. 12954) concerning a case of child custody and religious upbringing. The decision reflects an understanding of culture in terms of religious identity, manifesting in the juxtaposition of the parents' differing faith traditions.
It weighs the implications of the child's exposure to and participation in distinct religious practices, emphasizing the need to balance the rights of the parents with the well-being of the child.

> With the first ground of appeal, alleging violation of Articles 1, 19, and 30 of the Constitution, Articles 8 and 9 of the European Convention on Human Rights (ECHR), and Articles 147, 315 bis, 316, 337 bis, and ter of the Civil Code, the appellant - having established that the constitution outlines a pluralistic society concerning religious choices and that among the rights/duties stemming from the right to freedom of religion is also the right to educate children in one's own faith, provided that this occurs while respecting their inclinations and allowing them the freedom to choose whether and in what to believe - complains that the appellate court has restricted his right to introduce and appreciate his minor daughter to his new religion, despite the lack of compelling evidence that the child could be prejudiced by learning and adhering to the tenets of another doctrine, besides Catholicism.

Other examples emerge from the case Cassazione civile sez. I, 30/08/2019, n. 21916, which delves into a contentious familial dispute revolving around the religious upbringing of a minor child. At its core lies a clash between the religious beliefs of the child's parents, with one adhering to Catholicism and the other to Jehovah's Witnesses.
It is noted that:

> The court therefore deemed that given the conflict between the parents, the decision under Article 337 ter of the Civil Code falls to the judge and thus affirmed that, "while refraining from any intent of discrimination based on religious grounds, it must be considered that the father's choice predominantly corresponds to the child's interest, allowing for easier integration into the *social and cultural fabric of the belonging context*, which, although notably secularized, still retains a Catholic matrix (consider, for instance, the Italian artistic heritage inspired by the Catholic religious dimension, the youth gatherings fostered at the parish level with initiatives for children and adolescents linked to catechism, youth centers, summer camps, etc.); while respecting the beliefs of the mother, it cannot be overlooked the *sectarian nature of the religious community to which she adheres, closed in on itself and hostile to dialogue with any other interlocutor, being tied to a formalistic and biased interpretation of certain Old Testament texts, which has not inspired (at least in Italy) any literary or artistic work of cultural significance.*
> […]
> With the first ground of appeal, it is alleged a violation of the paramount interest of the child in maintaining a significant relationship with both parents and in receiving their *cultural and religious heritage*, in the absence of harm to the child and legal grounds to prohibit G.'s mother from involving him in her Jehovah's Witness religious activities. […] Therefore, the Court of Appeal of Milan (even surpassing the reasoning of the first-instance judge, which was also based on an unacceptable devaluation of the Jehovah's Witness religion) nonetheless fell into a false application of the aforementioned principles of equality and religious freedom, giving predominant importance to both parents' original decision to baptize their child.

After what has been indicated, as an introduction to the case in question, in the conclusion of the judgment, the judge asserts that:

> However, the possibility of adopting such restrictive measures, in the presence of a conflict between the two parents who both intend to transmit their religious education and are unable to reconcile the differing educational contributions arising from adherence to different religious beliefs, cannot be ordered by the judge based on an abstract evaluation of the religions adhered to by the parents, expressing a value judgment precluded from the judiciary by the constitutional and European conventional significance of the principle of religious freedom. Nor can such a possibility be based on the consideration of one of the parents subsequently adhering to a religion different from the one previously followed and practiced by both, and which originally was transmitted to the child or children as the common religion of the family.

In a judicial dispute (Corte d'Appello di Napoli, 18/07/2018, n. 3969) concerning the upbringing and religious education of a minor child, within the context of a separation proceeding. The appeal was initiated by one of the parties, challenging a specific aspect of the lower court's

decision that prohibited both parents from imparting religious education to the child. The central contention of the appellant was that such a prohibition violated the fundamental rights of the minor, as guaranteed by European and Italian constitutions.
As it is possible to read from the text of the judgment:

> Regarding the specific issues raised by Be., most of them appear to be devoid of legal significance or inadequate to cause harm to the growth of the minor. In a *multicultural and "liquid" society* like Italy in the 2000s, it must be acknowledged that there are increasingly prevalent minority positions that diverge from *cultural homogenization*; individuals who, due to their *religious beliefs or secular principles*, may not be interested in playing soccer, disapprove of the festive atmosphere associated with certain annual events, etc. In the case of other beliefs, they may celebrate Christmas (Orthodox), New Year (Confucian), observe fasting month (Islamic) on dates different from those prescribed by the Gregorian calendar, or impose specific dietary habits (vegetarians, vegans, foragers) for religious or secular reasons, without this necessarily constituting harm to the growth of a minor.

Despite the words of this last excerpt, is that the cultural alignment between the contemporary laws of Western nations and Christian moral principles results in a disparity where the freedom of others, particularly religious freedom, is not afforded equal status within Western national contexts. Christians encounter minimal obstacles when integrating their religious terminology into the legal framework of the state, especially regarding practical conduct. In contrast, individuals from diverse cultural backgrounds, whether foreign or indigenous, face significant challenges in conveying the semantics of their freedom and belief systems within the ostensibly secularized discourse of the public sphere (Ricca, 2023).
“Unlike the Christians, those individuals will not find their own cultural, ethical and religious codes woven in the weft of legal language, in the institutional lexicon and in the grammar of public life” (Ricca 2023, p.93).

What emerges when dealing with cultural background related to religious identity in legal cases is a quite critical framework, and several issues stand out: first, there is a tendency to juxtapose the parents' differing faith traditions, meaning them as a static identarian characteristics; second, there is often a hierarchical evaluation in such a juxtaposing, leading to stereotypical and rigid understanding of such religions. In this sense, such an understanding of religious identity, meant as part of one’s own culture, reflects the tendency to address these issues in terms of clash of religions in an overly rigid and simplistic understanding of these concepts.

5.3.3 Foreign Legal Frameworks: Marriage, Divorce, and Kafalah

Judicial decisions often delve into specific geographical regions, shedding light on cultural norms and delineating gender roles within these structures. In this section of the chapter, it is going to be explored the cultural context surrounding culture and in relation to foreign legal frameworks.
Marriage, a fundamental institution across cultures, serves as a lens through which it is possible to examine the complexities of societal norms, traditions, and gender dynamics within familial structures, and culture can play a pivotal role in shaping legal systems and their approach to marriage.
The concept of a "marital bond" itself relates to the ideal and ethical dimensions of matrimony and familial structures crafted by each culture, alongside their legal ramifications. Therefore, to fully grasp the meaning of "marital dissolution" across diverse cultural and legal landscapes, it is essential to delve into the understanding of "marriage" itself. Besides marriage and divorce, another frame of analysis when dealing with foreign legal frameworks is Kafalah, a form of legal guardianship originating from Islamic law, which holds significant relevance within foreign legal frameworks, especially in contexts where Islamic customs are prevalent. By examining the institute of Kafalah alongside judicial decisions on divorce and separation, it is possible to gain insight into how cultural norms influence legal frameworks and shape the dynamics of familial relationships within diverse societies, and, moreover, how Italian judges manage and perceive such cases, since they are becoming more and more frequent issues to deal with.

Marriage and Divorce

Dealing with divorce is of course a striking example. The scenario of divorce in Italy serves as a prominent illustration of how a legal institution characteristic of a foreign legal system, initially perceived as foreign and conflicting with public order, may evolve over time to no longer pose challenges to the fundamental principles of the domestic legal framework. Prior to the enactment of Law 898/1970, Italy regarded marriage as an indissoluble union. Consequently, the recognition of divorce decrees from countries permitting marital dissolution for reasons other than death was generally prohibited. This era gave rise to various complications as Italy, alongside Ireland and Spain, stood among the few nations where divorce was not permitted (Vigliotti, 2015).

Following the implementation of the 1970 law, there was an evident shift in the domestic legal landscape. Regarding the dissolution of marriages that exhibit elements divergent from our legal system, Italian judges now have access to a considerably broad legislative framework, encompassing both Italian domestic laws and European regulations.

In this regard, a prime example is provided by the Court of Milan, with a case regarding a consensual divorce request according to the forms and regulations of Japan, where the civil registrar of the municipality of Fano (Italy), refused to proceed with the transcription of the divorce decree.

The judgment (Tribunale civile Milano, sex IX, 24/06/2012, n. 8870) states:

> According to a well-established jurisprudence and doctrine, the rationale behind the aforementioned legal provision is to provide a remedy for potential cases of "one-way divorces," meaning that an Italian citizen, under their national law, remains bound by marriage while the foreign spouse has regained their freedom of status in their home country: thus, the aim is to align our legal system with the situation created abroad due to the dissolution of marriage. [...] In the case at hand, the divorce pronounced in Japan, due to the incompatibility of characters and the impossibility of continuing marital cohabitation, as attested by the parties themselves, has produced in that country the civil effects of the dissolution of the marital bond. Consequently, even under our legal system, the Plaintiff is entitled to obtain the dissolution of the marriage.

This seemingly straightforward case of considering foreign legal frameworks introduces us to the analysis of more intricate cases, characterized by nuances and implications that are subject to more debate. In particular, significant attention, both in Italy and beyond, has been focused on the field of family law concerning the Islamic world.

A notable example pertains to a Divorce Judgment issued by an Italian court (Tribunale di Padova, 2102/2017), which applied Moroccan family law, specifically Moudawwana Articles 83 and 114. Through a reference to EU Regulation No. 1259/2010, the divorce petition of the spouses was facilitated under the provision of "immediate divorce", bypassing the prerequisite of a one-year or six-month separation period mandated by Italian law No. 898/1920 (subsequently amended by law No. 55/2015). The court ruling stands out from prior similar judgments due to its inclusion of remarks regarding the financial aspects of such divorces, which are determined in accordance with Moroccan family law. However, the referral to Moroccan law is largely symbolic, lacking a comprehensive and insightful attempt at an intercultural interpretation or reconciliation of the spouses' claims or the overall circumstances (Ricca, 2017).

Two spouses, both originally from Morocco but having established residency in Italy prior to their marriage conducted in an Italian municipality, submit a divorce petition without preceding

separation. Assisted by legal counsel, they cite EU Regulation No. 1259/2010, Article 5, which allows couples to jointly designate the governing law for divorce and legal separation[44].

After verifying the jurisdiction of the Italian judge in accordance with Regulation EC 2201/2003[45], Article 3, § 1, letter a, the Court grants the spouses' request based on Article 5 of the said regulation and the Moudawwana (Moroccan Family Law), inspired by the Maliki school[46] but shaped to ensure greater protection for women compared to traditional norms. Articles 84 and 114 of the Moudawwana provide as follows:

> *Article 84*: The rights due to the wife include: the unpaid portion of the Sadaq[47] if due, maintenance due for the period of legal withdrawal ('Idda)[48], and the consolation gift (Mout'a)[49] which will be assessed based on the duration of the marriage, the financial situation of the spouse, the reasons for the divorce, and the extent of abuse demonstrated by the husband in seeking the divorce. During the 'Idda period, the wife resides in the marital

[44] This designation can be based on various criteria, such as the state where the spouses habitually reside at the time of agreement, the state of their last habitual residence, citizenship of one of the spouses at the time of agreement, or the law of the forum. The agreement regarding the applicable law may be established or amended at any time, but no later than when the judicial authority becomes involved. If permitted by the forum's law, the spouses may designate the applicable law during the legal proceedings, and the judicial authority shall record such designation accordingly.

[45] It is important to consider, according to Ricca (2017), and fully endorsed, that: "In this ruling, the judges refer to Regulation EU 1259/2010, although the text of this legislation was developed based on a request made at the time by Belgium, Bulgaria, Germany, Greece (subsequently withdrawn), Spain, France, Italy, Latvia, Luxembourg, Hungary, Malta, Austria, Portugal, Romania, and Slovenia, concerning the implementation of enhanced cooperation in the field of applicable law for divorce and legal separation. The geographical and multicultural area that accompanied the genesis of the Regulation is therefore European. However, points (12) and (14) of the preliminary considerations preceding the actual text, and the subsequent Article 4, emphasize the universalistic aspirations of the regulations contained therein, legitimizing their application even with reference to laws of states and/or normative systems not included among the participants in drafting or that are not members of the European Union" (Ricca 2017, p.16).

[46] Adherents of the Islamic legal tradition following the teachings of Mālik ibn Anas (born in Medina between 709 and 716, died there in 795) form one of the four prominent madhhabs among Sunni Muslims. They prioritize legal practices observed in Medina, which is regarded as the primary source of Muhammad's teachings. This school of thought is prevalent in the Western Arab world, Egypt, Sudan, and the Northwest region of Eritrea (https://www.treccani.it/enciclopedia/malikiti/)

[47] The Sadaq refers to the dowry, as regulated under Chapter II of the Moudawwana, specifically articles 26-34. Additional mentions of the Sadaq can be found in Article 67 concerning the agreement for the dissolution of marriage.

[48] 'Idda denotes the so-called legal waiting period that a wife must observe following the termination of marriage due to death, repudiation, or divorce. Traditionally, 'idda was designed to confirm the wife's pregnancy status and required her to refrain from remarriage until its completion. This waiting period, traditionally three months long, is reminiscent of similar durations found in civil law codes concerning paternity presumptions. During this interval, the spouse is responsible for maintaining the wife in the matrimonial home while still holding marital authority over her, according to classical Islamic law. After this period elapses, the husband is relieved of any obligation to provide financial support or maintenance to the wife. However, this aspect reflects classical Islamic law and does not align with the provisions outlined in the Moudawwana or other Islamic country codes (Ricca, 2017).

[49]Mout'ah constitutes a sort of compensation owed to the wife who undergoes repudiation or does not consent to divorce (in this case it refers to "Islamic country law", not "classical Islamic law"). The methods for calculating mout'a or mut'ah vary from country to country. In general, it should be based on the overall circumstances of the divorce, considering the husband's financial resources, and akin to an alimony payment to be provided at the end of the 'idda, ensuring the equivalent of maintenance for a variable period, which can even extend to two or more years.

> home or, if necessary, in a dwelling that satisfies her and according to the financial situation of the spouse. Otherwise, the Court sets the amount of housing expenses, which will also be deposited with the court registry, in the same manner as other rights payable by the wife (Ricca 2017, p.3).

In the judgment it is then stated:

> Article 114 of the aforementioned *Moroccan family code* provides for the possibility of reaching an *immediate divorce* decree through mutual consent. It states: "The two spouses may agree to end their marital union, with or without conditions, provided that such conditions are not incompatible with the provisions of this Code and do not prejudice the interests of the children. In case of agreement, the divorce petition is submitted to the court by both or one of the spouses, accompanied by a document containing the aforementioned agreement, in order to obtain authorization for the drafting of the divorce deed. The court attempts to reconcile the two spouses to the extent possible, and if reconciliation proves impossible, it authorizes the divorce deed and its drafting.

The judgment deals with the strictly international-private law level, except for the application of Moroccan matrimonial law even regarding the financial aspects of the separation agreement. The judges make a rather succinct reference to Sadaq and Mout‘ah to assess the adequacy of the amount that the spouse will have to pay to the woman as agreed upon by both parties.

Another intriguing case of analysis, which has garnered particular attention in public discourse, involves the institution of repudiation. In certain contemporary legal systems, as well as in historical contexts, there exist methods for terminating a marital bond based on the desire of only one spouse. An examination of historical and comparative perspectives highlights how different views on marriage – whether seen as a reflection of the personal autonomy of those involved in the marital union, grounded in the enduring emotional connection between spouses, or as a legal institution subject to civil laws and state authority – significantly shape attitudes towards divorce and the acceptance of repudiation. Repudiation, understood as a unilateral decision by one spouse to end the marital tie, is thus influenced by varying interpretations of marital relationships and legal frameworks.

The prevailing Italian jurisprudence firmly rejects the recognition within Italy of unilateral repudiation acts conducted abroad in accordance with local laws, citing their conflict with public order. This stance is supported by recent doctrinal contributions (Fucillo, 2018) and is also echoed in official sources like the Ministry of the Interior's Digest (paragraph 11.3.1). One fundamental principle often highlighted is the prohibition of discrimination between spouses based on gender, given that repudiation is a prerogative typically wielded solely by husbands.

Consequently, legal frameworks pertaining to Islamic divorce practices are generally deemed inapplicable. An illustrative instance involves dissolution rulings applying Italian law, which considers it against public order for a national law to limit marital dissolution solely to repudiation (Long, 2015).

An interesting example of such a theme, in which therefore cultural context emerges regarding foreign legal systems governing familial relations, notably marriage and divorce, is the case Cassazione civile – 07/08/2020, n. 16804. The judgment discusses the application of "Palestinian Law" and the procedures outlined within it concerning divorce proceedings, reflecting an understanding of cultural diversity and the incorporation of cultural and religious practices into the legal framework governing family matters. The Court of Appeal of Rome, in judgment No. 7464/2016, delivered in a case initiated in 2015 by a woman who sought the removal of the transcription from the Italian civil registry of the non-definitive judgment dated April 2013, issued by the Shariatic Tribunal of Nablus in the West Bank (Palestine). This judgment dissolved the Shariatic marriage contracted, following the unilateral repudiation of the husband. The Court ruled that both the non-definitive judgment of July 2012 and the subsequent definitive judgment of November 2012, which granted clearance for F.Z. to remarry, did not meet the legal requirements for recognition in Italy and, as a result, the Civil Status Officer was ordered to cancel the transcription from the marriage certificate.

Regarding the mention of foreign laws, particularly in matters of familial relations like marriage and divorce (talaq), the text of the judgment states:

> A repudiation decision issued abroad by a religious authority (specifically a *Sharia court*, in [OMISSIS]), even if considered equivalent, according to foreign law, to a judgment by a state judge, cannot be recognized within the Italian legal system due to the violation of legal principles applicable in the forum, under the dual aspect of substantive public order (violation of the principle of non-discrimination between men and women; gender discrimination) and procedural public order (lack of equal defense and absence of an effective procedure conducted in real adversarial proceedings).

Nevertheless, a widely recognized religious issue in marital affairs pertains to the acknowledgment of polygamous unions (more accurately termed polygynous, as they involve one man with multiple women) conducted abroad. As commonly understood, in Italy, the civil registrar declines to officiate marriages if they determine the absence of freedom of marital status in both the Italian citizen (as

per Article 86 of the Civil Code) and the foreign spouse (referenced in Article 116 of the Civil Code), irrespective of religious affiliation.

It has occurred that judges or civil registrars have been faced with the request to indirectly recognize effects of a polygamous marriage conducted abroad by foreigners residing in Italy or by Italians who have not met the requirements set forth in the Civil Code (Article 115 of the Civil Code). In both cases, the majority approach has been to firmly reject its recognition in Italy for violating the monogamous principle, considered an expression of the prohibition of discrimination based on sex.

In the initial instance, the Bologna Court[50] (Trib. Bologna 12/03/2003) received a petition contesting the rejection of an entry permit by the Italian Embassy in Rabat. This refusal pertained to a request for family reunification filed by a minor with his mother, purportedly contravening Article 28 of the Consolidated Immigration Act. The Embassy declined the visa on the grounds that the arrival of the foreign citizen in Italy would result in a polygamous situation, given that the petitioner's father already had a wife residing in Italian territory.

> Considering that, in this case, the entry visa was denied due to the fact that the stay of the aforementioned foreign citizen in the national territory would result in a case of polygamy, as the first wife of Mr. [father of the petitioner, holder of a clearance issued by the Bologna Police Headquarters on 21.9.2002], Mrs. K., who herself holds a residence permit, is already present in the territory.

The adjudicating body reached a different conclusion and mandated the issuance of the visa for family reunification, considering the contested decision illegitimate. In the opinion of the Court, the denial of clearance did not correctly apply the grounds for refusal outlined in Article 29 of the Consolidated Immigration Act, nor did it seem justified by the necessity to safeguard principles of public order, as:

> The crime of bigamy can only be committed by an Italian citizen on national territory, with the behavior of the foreigner abroad whose national law recognizes the possibility of contracting multiple marriages being irrelevant; Article 29 is applicable only to the foreigner who requests recognition and the limit established therein would apply only if it were the father who requested the reunification of two wives, invoking the civil effects of both

[50] Trib. Bologna 12 marzo 2003, in Diritto immigrazione e cittadinanza, 2003, p. 140 ss.

> marriages; no principle of public order appears to be violated where the marriages contracted abroad by the petitioner's father are devoid of civil effects under Italian law."

Kafalah

An initial verdict issued by the Court of Cassation in 1996 (Corte di Cassazione 4/11/1996, n. 9576) confirms the adoptability of two Tunisian minors by an Italian couple. However, it does not explicitly discuss the compatibility of the Kafalah institution with Italian legislation, nor does it apply it in favor of the provisions within the national legal framework.
These early rulings, including the aforementioned case, pertain to situations where Italian couples sought recognition of this institution, having brought minors entrusted to them in Italy for adoption from the minor's home country under a Kafalah arrangement.
On the other hand, in a scenario involving an Italian couple who brought a newborn into Italy, sidestepping international adoption regulations and border protocols, entrusted to them by Moroccan authorities through Kafala, the Juvenile Court of Turin, in a ruling dated July 16, 2003, removed the child from the couple's custody. They deemed the child adoptable due to the couple's circumvention of prevailing regulations. The decision received subsequent validation from the Court of Appeals of Turin in 2004 and ultimately, in 2005, from the Court of Cassation (Corte di Cassazione, 4/11/2005, n. 21395). The latter pronounced the judgment as devoid of flaws and underscored an important distinction:

> the Kafalah institution [...] while substantively aiming to achieve a real educational commitment by the trustees, comparable to the content of our family custody, from a legal-formal perspective does not intend to transfer guardianship as well, as this would contradict the principle, which that legislation particularly emphasizes, that the child's *bond with their origins* should never be lost.

Since 2004, however, there has been a significant number of opposing judgments (Rocchini, 2011). These decisions, prioritizing the best interests of the child, do not strictly apply the institution itself but rather its practical implications, making a distinction between the formal and substantive aspects.
Despite this trend, there are still instances of negative rulings, in particular when the petitioner is an Italian citizen (Lang, 2011; Vigliotti, 2015). This overlooks the fact that even though an Italian citizen may seek recourse through international adoption mechanisms, such mechanisms are

currently not recognized in many Islamic countries. Consequently, this precludes Italian citizens, for example, from adopting children originating from Morocco.

In the case of Cassazione Civile sez. I n. 1843 (2015)

> The two aspects, delineated in the grounds of appeal, confirm that the Ministry disregards the consideration of the Kafalah institution as a distinctive tool of the Islamic world, particularly in the *legal framework of the Kingdom of Morocco*. Instead, it overlays onto it the framework of international adoption as the sole form of welcoming a non-EU minor into the family of an Italian citizen, thus failing to assess [...] the suitability, both in abstract and in concrete terms, of Kafalah to achieve, in the best interests of the child, their protection within a legal and cultural context different from that of Italy, and one that does not allow for addressing the child's protection needs through the institution of adoption.

And more:

> Kafalah is a relatively recent institution, specifically widespread in the North African region, which cannot be accurately considered Islamic law but is in force in countries where the Muslim religion has an absolutely predominant impact on social fabric and therefore assumes decisive significance, particularly regarding child protection, due to the aforementioned prohibition of adoption stemming from the moral teachings of the Quran. [...] This reconnection has been presumed suitable to facilitate integration into a new national, social, and cultural context, certainly stimulating and not overly burdensome for minors, also because it is experienced within an extended family context carrying common values and identity shared with the original family.

In conclusion, as for kafalah, for which there has been a significant number of opposing judgments, as previously presented, the analysis of cases concerning marriage and divorce allowed for an appreciation of cultural diversity and the integration of cultural and religious practices within the legal framework governing family matters. Concerning the dissolution of marriages that differ from our legal system, Italian judges now operate within a significantly broad legislative framework, encompassing both Italian domestic laws and European regulations.

Irrespective of how the "normative system" is conceptualized (often only implicitly), it is important to note another commonly observed practice, which involves referencing alternative normative systems without delving into them adequately. Sometimes, as emerged in some of the judgements here presented (for example the one concerning Moudawwana), common-sense assumptions replace a thorough analysis, not only when judges address the conceptual aspects defining cultural practices

but also when they tackle operational aspects, pertaining to how this element should be practically considered.

What is here outlined, therefore, is that when transitioning from analyzing content to examining the formal (logical structure) and linguistic aspects of judgments and their arguments, it is common to encounter errors frequently highlighted by anthropological and sociological science. These errors often revolve around the phenomenon known as cultural "essentialization". Moreover, logical gaps in the arguments leave space for common-sense constructs, which can dangerously pave the way for implicit and unspoken assumptions, as it is going to be presented in the next paragraph.

5.4 Linguistic and Conceptual Representations

> The number of words known and used is directly proportional to the level of development of democracy and equality of opportunities. Few words and few ideas, few possibilities and little democracy; the more words one knows, the richer political discussion is, and with it, democratic life (Zagrebelsky, 2006).

The domain of discourse strategies within judicial decisions reveals a hidden choreography—the subtle and overt linguistic, textual, and structural maneuvers that judges and legal practitioners utilize to legitimize rulings, shape public understanding, and navigate the entwined realms of law, morality, and social policy. Law does not operate in a vacuum; instead, it operates within a realm rich with rhetoric, encoded power dynamics, and semiotic navigation.

To dissect the discourse strategies employed is to unravel the threads of legal rationality and persuasive efficacy that give structure to the jurisprudential tapestry. It is a nuanced inquiry into how textual modalities, narrative authority, and the intertextuality of legal references coalesce to construct the edifice of judicial reasoning and its sociocultural implications.

Building upon the initial methodological framework, Critical Discourse Analysis serves as a vital analytical tool to further explore the intricacies of these judicial decisions.

By applying CDA, this research project involves a meticulous examination of the language, terminology, and narrative constructs employed in the legal texts. This form of analysis considers the subtle nuances and connotations embedded within the linguistic choices made by judges, which often offer insights into the unspoken power dynamics, assumptions, and ideologies underscoring legal interpretations. Moreover, CDA’s emphasis on language as a conduit of power and social

control is especially pertinent when dissecting the authoritative voice inherent within judicial decisions.

The main patterns and themes identified through CDA will include how the discursive structures reflect and reinforce the perceived legitimacy and normative authority of the courts. These patterns and themes will not only highlight the representation and treatment of cultural diversity within legal decision-making but also provide a nuanced understanding of how legal discourse contributes to the social construction of legal concepts and categories pertinent to culture, thus enriching the overarching analysis of the impact of cultural diversity on legal outcomes in Italy.

This section sheds light on two forms of exclusion, which replicate the pitfalls at a specific level: they position the particular as the universal, not only across groups but also within them. The first way the Courts reproduce this form of exclusion is by elevating one cultural or religious practice/way of life to the paradigmatic practice/way of life of the group and further solidifying it as the essence of group identity. The second way in which the Courts reproduce exclusion is more intricate. It resembles the first form in that it identifies one particular feature or experience as representative of the entire group. However, it differs in that it additionally associates this feature or experience with negative stereotypes. Thus, in this second form, exclusions and hierarchies occur (i) within groups because one particular feature or experience is elevated as the defining characteristic of the whole group and (ii) most crucially across groups because, by portraying the practice in question negatively, it creates an us/them binary.

In summary, the two forms of exclusions and hierarchies explored in this section entail a simplification process – where the group or collective is simplified to a single general characteristic, which is then presented as the defining trait of the group. However, a crucial distinction lies in the fact that while the first form of exclusion or hierarchy values or esteems the trait, the second form devalues or delegitimizes it.

One manifestation of the critique regarding group representation is referred to as anti-essentialism. In its simplest form, anti-essentialism challenges the notion that categories of people or collectives (such as Muslims, Africans, or in general immigrants) possess an inherent, unchanging 'essence'. However, there are various interpretations of essentialism.

Anne Phillips (2010), for instance, identifies four: (i) assigning certain characteristics to all individuals within a category; (ii) attributing specific traits to the category itself in ways that may naturalize or solidify what could be socially constructed; (iii) employing collectives in a manner

that assumes uniformity and cohesion within the group; and (iv) treating particular characteristics as defining the entire group.

The anti-essentialist critique aims to address several risks, including overlooking intra-group diversity by favoring certain perspectives or experiences over others. Integrating the insights of anti-essentialism does not entail abandoning group categories and generalizations altogether, but rather questioning and deconstructing them. As identity is viewed as inherently constructed, the challenge lies in questioning identity as something inherent or natural and instead recognizing identities as socio-historical constructs.

By integrating anti-essentialist perspectives, the objective is to take on a critical stance toward the utilization of group generalizations and classifications. This critical approach entails contemplating the origins and purposes behind such generalizations and classifications, as well as recognizing their incomplete, subject-to-revision, and context-dependent nature.

The scholarly literature (Minor, 1997; Phillips, 2007) frequently cautions against essentialist interpretations of collective identities commonly associated with identity politics. Such interpretations are criticized for reducing individuals to singular traits, viewpoints, and stereotypes, constraining self-definition, perpetuating uniformity within groups while disregarding internal differences and enforcing rigid group boundaries to regulate membership. Another significant criticism of essentialism is its tendency to prioritize one group's experiences over others, thereby reinforcing hierarchies within categories. Consequently, the experiences of certain individuals are either overlooked or considered deviations from the norm.

Upon the initial and comprehensive examination of the Courts' discussion concerning identity characteristics, it becomes evident that there is a prevalent tendency to generalize the characteristics of the applicants and objectify their traits. Examples such as "Culture", "Muslim religion", "way of life", and "Cultural context" highlight this trend of objectification and generalization of the applicants' traits.

Frequently, the utilization of objectifications and generalizations appears inevitable, inherent to the functioning of the law or legal reasoning (Peroni, 2014). Legal documents typically adopt an objective and impartial tone, reflecting the authority or expertise of the legal figure behind them, which tends to obscure their rhetorical and argumentative character. An approach to interpreting the text involves examining what it omits and remains silent on, thereby shaping the perception of normalcy.

The disparities between an individual's actual identity and their legal representation become in fact particularly evident within legal proceedings, where the legal system operates according to its own set of criteria for recognition. These criteria are the guidelines that aid claimants in being

acknowledged within the courtroom. To effectively communicate with the courts, claimants must articulate their narratives and present themselves in ways that conform to legal standards. This process involves not only translating colloquial language into legal terminology, but also reshaping personal characteristics into legal arguments, reconfiguring stories into narratives aligned with legal principles, and adhering to rules of evidence and procedure. More fundamentally, it may entail converting specific details into generalizations, narratives into overarching stories, and individuals into simplified representations.

As a result, the intricate and multifaceted nature of applicants' real-life experiences can become obscured within the layers of legal interpretation, which often seeks to transform the individual litigant into a rhetorically effective collective entity, thus diminishing their distinctiveness within the legal process.

Conversely, the research findings illustrate that, at times, the portrayal of applicants through collective representations and objectified depictions of their traits leads to two distinct problematic scenarios. The first problematic portrayal involves negative stereotyping: when the applicant is reduced to and obscured behind an objectified trait or a generalized representation, the Court links the trait or group with a stereotype that reinforces the notion of 'otherness'. Such stereotyping typically embodies 'prejudice or bias' toward a group, further perpetuating its subordination.

In essence, stereotypes are perceptions and beliefs about the characteristics and attributes of a group and its members, influencing how individuals perceive and interact with the group. Stereotyping represents a form of 'intergroup bias', which manifests as a tendency to favorably evaluate one's own group or its members over an external group or its members.

The second problematic representation involves what is here termed 'naturalizing': following the reduction of the applicant to an objectified trait or a generalized representation, the Court links the trait with an immutable core of the applicant's group identity. Two forms of essentialism underpin this mode of reasoning: first, the attribution of specific characteristics to a fixed 'essence', thereby 'naturalizing differences that may be historically variable and socially constructed'; and second, the treatment of these characteristics as defining features for all individuals within the category.

5.4.1 Naturalization of Practices

Based on the analysis, it appears that these two problematic types of legal reasoning are most commonly found in cases involving inadequacy of relational and caregiving of parents.

In the first part of this chapter, it has been already noted the significance of parental inadequacy and culture, portrayed as a clash of family models influenced by cultural factors, which emerges as a fundamental aspect. While this observation initially pertained to cultural references within the texts, it is essential to conduct a more detailed analysis of the specific language used in these cases within the examined judgments.
A thorough examination of the Court's portrayal of the applicants and their practices in Cassazione n.3947 reveals that while the applicants are not entirely disregarded—references to them can be found elsewhere in the judgments—they are consistently marginalized.

> All interviews were characterized by aggressive verbalization, denigration of the context in which they were held, the intention to evade the investigation, explicit and claimed communicative closure, anger, hostility, refusal of dialogue, distancing clichés, [...] accusations of racism extended to all the operators encountered up to that moment. As for the personality, traits of dysphoric personality and thoughts of a paranoid nature emerged, rigid defensive structure, references to the religious world sometimes fragmented, reiterated, and out of context, revealing a picture of closure in a delusional thought.

In this passage, the Court employs nominalization to relegate the applicant to the background. Instead of using active verb clauses with the applicant as the subject, the Court transforms the verbs into nouns (for example, "aggressive verbalization"). Through nominalization, the Court not only diminishes the importance of the agent (the applicant) but also objectifies her actions (such as aggressive verbalization). Consequently, the actions are depicted in a static manner.
And again, in Cassazione n. 31976:

> The first two technical consultations had confirmed [...] an unrecognized issue with all the relational elements in depicting parental access, a clear inadequacy in all aspects related to caregiving function, the total denial of any personal, couple, or familial criticality, the persistence of an oppositional/persecutory attitude towards all help interventions aimed at nepromoting the recovery of their parenting abilities, serious issues in personality [...].

Here, the Court also backgrounds the applicant and objectivizes her practice through nominalization (for example "the total denial of any personal, couple, or familial criticality" or "a clear inadequacy in all aspects related to caregiving function") As a result, the Court leaves the applicant out and turns the inadequacy of all the relational aspects into the center of its discourse.

By evoking a cultural facet pertinent to these assessments and characterizing it in connection with parental competency, the Court consequently places them in a subordinate position compared to

non-Italian and non-European women, thereby perpetuating hierarchies between different groups—or inter-group hierarchies, since stereotypes frequently function to uphold established power dynamics, reinforcing a symbolic and tangible hierarchy between "us" and "them.
This mode of thinking establishes hierarchies between the opposing ends of the dichotomy and among the groups affiliated with either side (Peroni, 2014). The dyad reflects the 'culture versus citizenship dichotomy,' as Leti Volpp points out: ″[t]he citizen is assumed to be modern and motivated by reason; the cultural other is assumed to be traditional and motivated by culture" (Volpp, 2007, p.574).

The case Cassazione n. 31057, in which the Court of Cassation expresses its opinion on a case in which, for the purpose of adoption, reference was made to the cognitive and cultural deficiencies of the parent as grounds for deeming them unsuitable:

> The first ground alleges the violation or misapplication of Law no. [...] concerning the declaration of parental unsuitability of the father, based on his cultural background.
>
> The Court of Appeal stated that the father, still bound to his original culture and to a representation of the family that does not correspond to ours, is not aware of his parental role, imagining he can delegate the upbringing of the child to others, according to a vision of the family and family relationships different from that applicable in Italy.

The primary adverse consequence of marginalizing the applicants is the omission of their unique perspectives and individual circumstances from the assessment. Essentially, the applicants are rendered nearly invisible. The Courts not only overlook the context or complexities surrounding their actions but also fail to consider the repercussions, such as suffering and loss, resulting from their decisions. In essence, by excluding the applicants from the analysis, the Court deliberately avoids any opportunity to weigh the significance of their behaviors – along with the personal, professional, or educational implications – against the broader public interests or rights under consideration.

It is interesting to note how the same appellants, in a case concerning adoptability status (Cassazione Civile n.21554), base one of the grounds of appeal by claiming some "cultural behavior".
The crux of the matter in this judicial decision revolves around the adoption proceedings concerning two minors, whose biological parents, deemed incapable of providing adequate care, had their parental responsibilities suspended by the lower courts. Following this determination, the minors were deemed adoptable, and arrangements were made for their placement with prospective adoptive

families. The appeal presented to the Court of Cassation challenged these rulings on various legal grounds, including purported infringements of specific Italian laws governing adoption protocols and the rights of relatives and foster parents. However, the Court of Cassation, in its deliberation ultimately affirmed the decisions of the lower courts and dismissed the appeal in its entirety. In the appeal presented, it is possible to read:

> With this premise in mind, the reason subsequently asserts that "the substance of things must be evaluated": in "African culture", the family "is understood as an extended group of close relatives"; "there is no codified family law"; "monogamy or polygamy depends solely on personal beliefs"; "economic instability compels family groups to remain united."

Implicitly treating one's cultural categories as self-evident leads to a process of naturalization and, consequently, an ontologization of the cultural preferences and judgment frameworks underlying them. In simpler terms, it implies that one's perspective is mistaken for the norm and, when perceived as natural, inherently good. This cognitive and axiological stance is closely intertwined with the dichotomy between objectivity and subjectivity, external and internal, public and private, the legally institutionalized sphere, and the realm of freedom. Such a mode of thinking about the cognitive capacities of foreigners or minorities, highlighting the challenge of reflexively understanding one's own attitudes, effectively erects a barrier against cultural otherness. It obstructs the comprehension of the viewpoints of those who differ from us and ultimately diminishes the significance of their distinct cognitive and axiological frameworks (Ricca, 2023).
What appears evident from the chosen judgments is that the mention of cultural factors is consistently vague and generic, often overly brief and inaccurate. Conversely, the subjective aspect is seldom adequately addressed; rather, it is frequently approached by referencing various cultural contexts. This suggests that certain behaviors and traits are attributed more to cultural background than to individual characteristics, neglecting the personal dimension.

One of the reasons why critical discourse scholars have been skeptical of nominalizations for a long time is their tendency to facilitate reification (Billig, 2008). The underlying message conveyed by the documents is a portrayal of cultural variables in an approximate and stereotypical manner, aimed at discrediting or deeming a specific family relationship illegitimate. Consequently, what these documents address is the legal status concerning culture and cultural diversity (Taliani, 2015).
It is necessary to move beyond the narrative of family life centered on the concept of a 'core' family, which is often used as the standard for assessing migrant (and other) applicants' families. Secondly, it is fundamental to adopt criteria that better reflect the diverse cultural landscape of

Europe and are more responsive to the varied forms of family life among those under the Courts' jurisdiction, reconsidering the two principles of equality and reality.

5.4.2 Negative Stereotyping

An instance illustrating the problem of negative stereotyping arises in cases related to religious education and identity and parenting. As discussed earlier in this chapter, certain court rulings addressing cultural diversity have focused on religious differences, especially regarding the upbringing of children in families where parents follow different religions.
A notable example is the case, already mentioned, Cassazione n. 21916, in which emerges that:

> The Court noted that Mr. M strongly opposed the idea of the child (who was baptized in the Catholic Church) receiving religious instruction from the mother consistent with the Jehovah's Witness doctrine and participating in related ceremonies at the Kingdom Hall attended by L. Instead, he preferred that the child undergo the path of religious education and introduction to the sacraments of the Catholic Church until Confirmation (Cresima), so that he could understand the foundations of that faith and make an informed choice as an adult. Therefore, the Court considered that given the disagreement between the parents, the decision falls to the judge under Article 337 ter of the Civil Code, and thus affirmed that, while refraining from any intention of discrimination for religious reasons, it must be considered that the father's choice is more in line with the child's interests, allowing him to more easily integrate into the social and cultural fabric of the context to which he belongs. *This context, although notably secularized, still has a Catholic background (consider, for example, the Italian artistic heritage inspired by the religious and Catholic dimension, and the youth groups organized at the parish level with initiatives for children and teenagers related to catechism, youth clubs, summer camps, etc.)*. While respecting L's beliefs, it cannot be ignored that her religious community is *sectarian in nature*, *closed off and hostile* to engaging with any other interlocutor, as it is tied to a *formalistic and biased interpretation of certain Old Testament texts*, which has not inspired any cultural literary or artistic works (at least in Italy).

In this passage, negative stereotyping is evident in the Court's portrayal of the mother's religious community, consistent with the Jehovah's Witness doctrine.
The Court describes the community as "sectarian in nature, closed off and hostile to engaging with any other interlocutor".
This depiction reduces the complexity of the religious community to a singular negative stereotype, emphasizing its insularity and intolerance toward others. Furthermore, the Court contrasts this portrayal with a more positive depiction of the Catholic Church, framing it as conducive to the

child's integration into the social and cultural fabric of the community.
The Court highlights the Italian artistic heritage inspired by the Catholic dimension and the positive initiatives for children and teenagers organized by Catholic youth groups.
This juxtaposition between the negative portrayal of the Jehovah's Witness community and the positive depiction of the Catholic Church perpetuates a biased view that favors the latter while reinforcing the notion of 'otherness' associated with the former. The judge's consideration of the societal context, including the prevalence of Catholicism in Italy and its cultural significance, reflects an influence of the broader legal and societal norms within which the decision is made.
Legal culture often incorporates societal norms and values, shaping legal interpretations and judgments. Bourdieu argues that individuals within a societal field internalize these dominant norms and preferences, shaping their behaviors and decisions in alignment with them.
The interpretation should align with the imperative to reassess national legal cultures, granting them a comparable dialogical and transactional perspective.
This endeavor brings secularism into focus at an unprecedented level of anthropological profundity. It prompts social and institutional entities to explore the cultural realms of unseen religion, aiming to discern the cognitive frameworks historically influenced by faith, now intertwined with the vernacular of common secular language and legal terminology.

The Court of Cassation responds by stating that:

> The Court of Appeal of Milan (even going beyond the reasoning of the first instance judge, which was also based on an unacceptable assessment of the disvalue of the Jehovah's Witnesses' religion, also incurred a false application of the invoked principles of equality and religious freedom, giving predominant importance to the original choice of both parents to baptize their child. [...] the alleged confusion or risk of disorientation or burden do not, in themselves, identify a choice between the two religious professions, except by virtue of a prejudice against the Jehovah's Witness religion compared to the Catholic one, the petitioner rightly emphasizes with the first ground that there is no evidence that L.'s religious practices are prejudicial, and with the second ground that the trial judges did not deem it necessary to either hear the minor or seek the assistance of a court-appointed technical consultant, which had even been requested by M.
>
> [...] the possibility of adopting such restrictive measures, in the presence of a conflict between the two parents who both intend to transmit their own religious education and are unable to reconcile the different educational contributions resulting from adherence to a different religious belief, cannot be determined by the judge on the basis of an abstract assessment of the religions adhered to by the parents, expressing a value judgment precluded from the judicial authority by the constitutional and European Convention on Human Rights recognition of the principle of religious freedom. Nor can this possibility be based on the

> consideration of one of the parents subsequently adhering to a different religion than the one previously followed and practiced by both, and which originally was transmitted to the child or children as the common religion of the family.

An alarming implication of the Court's objectification of the applicants' practices is the act of delegitimization. Utilizing its authority, the Court resorts to what Van Leeuwen (2008) terms 'authorization' to delegitimize religions other than Catholicism. Employing a form of delegitimization identified by Van Leeuwen (2008) as 'moral evaluation' (namely ‘legitimation by reference to the authority of tradition, custom, law, and/or persons in whom institutional authority of some kind is vested), ’the Court relies on 'specific discourses of moral value'. Consequently, it struggles to reconcile adherence to religious communities other than Catholicism with the principles of tolerance, respect for others, and, most importantly, equality and non-discrimination.
By overlooking the specific circumstances and motivations of the applicants, the ordinary court succumbs to a form of essentialism characterized by what is known as 'over-generalization and stereotyping'. In summary, by marginalizing the applicants and objectifying their practices, the Court diminishes the depth of its decisions. It neglects to evaluate the significance for the applicants and, at the same time, exposes their practices to abstract and detrimental stereotypical judgments.

As noted earlier, the endeavor to assert that the political and/or ethical frameworks of modern secular states are devoid of religious influence and purely rational may prove effective in terms of communication—and indeed, it has done so. However, the efficacy of such a representational strategy is inevitably bound to diminish over time. Within social contexts, the anthropological dimensions of religion tend to be diluted within common culture due to the imitative effect engendered by communicative norms. From this vantage point, religion and practical reasoning can become so intertwined that they appear inseparable, and this tacit assimilation can undoubtedly serve the purposes of public consensus and social regulation (Ricca, 2023).

The judicial decision Cassazione civile n.4002 pertains to a case brought before the Court of Appeal in Rome regarding the adoption of a minor child. Born under circumstances involving complex familial dynamics, the child's biological parents contested the declaration of the child's adoptability issued by the lower court. The Court of Appeal's ruling, which upheld the declaration of adoptability, was challenged through a petition for Cassation by the parents.
The primary contention of the parents revolved around the perceived inadequacy of the lower court's assessment, alleging a lack of thorough examination of their current circumstances and their ability to provide for their child's welfare. Central to their argument was the assertion of their

improved capacity to assume parental responsibilities, evidenced by their stable employment, accommodation, and the birth and nurturing of two additional children.
The court's decision, ultimately, acknowledged the parents' arguments, emphasizing the necessity for a current and comprehensive evaluation of the family's circumstances, thereby underscoring the dynamic nature of familial dynamics and parental capabilities in the context of adoption proceedings.
In the text, while presenting the case, it emerges:

> Regarding the father, however, difficulties have been found on his part, as an asylum seeker from Nigeria, in assuming a parental role within a context where he has not culturally assimilated well (emphasis is placed, among other things, on his lack of knowledge of the Italian language which would have prevented him from integrating with an active role in the host country).

The reason for the appeal was accepted:

> In particular, the appellants argue that the judge of the second instance based their conviction on personal events. Regarding the father, the judgment of unsuitability was based almost entirely on difficulties in socio-economic integration that would have prevented him from assuming a responsible parental role within a cultural context profoundly different from his background. On his part, the father has shown himself capable of integration, having found employment as a cleaner at a car dealership and attending an Italian language course at a school for foreigners. The assessment concerning the father largely relies on his belonging to a cultural and social context different from that of the foster family, and on a negative judgment about his willingness to integrate, countered by the representation of the situation deduced to support the alleged changes in interpersonal life and social stabilization.

The judicial decision here discussed appears to involve negative stereotyping in how it presents the parents, especially when describing their cultural backgrounds and socio-economic situations. By highlighting the challenges the parents face due to their cultural differences and past struggles, the Court runs the risk of oversimplifying them into generalized categories based on perceived shortcomings. This kind of portrayal overlooks the unique experiences and complexities of the parents, reinforcing a sense of 'otherness' and perpetuating stereotypes associated with their cultural or social group. Such depiction may carry biases or prejudices against individuals from specific backgrounds, further marginalizing them in the legal process. Not only does this stereotyping influence how the Court assesses the parents' abilities, but it also affects how they are perceived by society at large. Additionally, it hints at a form of bias favoring certain societal groups over others, which can impact the outcome of legal proceedings. Therefore, examining the judgment through the

lens of negative stereotyping underscores the importance of scrutinizing how individuals are portrayed in legal contexts and understanding the potential consequences for issues like fairness, equality, and justice.

Another case of relevance, Cassazione n. 24792, can be here briefly presented and it revolves around a complex familial situation. It delves into the delicate matter of parental rights and the best interests of the children involved and the judicial decision highlights the challenges faced by the parents, particularly the mother, in providing adequate care for their children. The court's decision to declare the children adoptable stems from concerns regarding the parents' ability to offer a stable and nurturing environment. However, upon closer examination, it becomes apparent that the judgment may have oversimplified the circumstances, potentially objectifying the parents and neglecting the nuanced cultural and socio-economic factors at play. Furthermore, the language used in the judgment could perpetuate stereotypes and biases, further complicating an already sensitive legal matter.

> In light of various expert and social services reports, the Court of Appeal found that the mother of the minors had voluntarily distanced herself from them for a significant period due to various behaviors, including: leaving the community in May [...], failure to appear at the hearing scheduled before the juvenile court [...]. Furthermore, the appellate court noted that the mother of the minors had refused many proposed aids and did not seem to take an active stance regarding a potential recovery of her parenting competence. It added that she exhibited a dual expression of maternal function, sometimes present and capable of providing a secure base, other times absent, neglectful, cold, and lacking empathy, an overall situation deemed incompatible with a potential recovery of her parenting skills, even considering her post-traumatic personality type with instability in affective relationships.
> […]
> First and foremost, it is necessary to highlight how the Court of Appeal, and to some extent the experts, *did not adequately consider the specificity of S.M.'s social-family condition and her cultural roots.* Indeed, the departure from the community where the minor daughters were placed occurred following a particularly painful experience for the petitioner herself, whose employment relationship with the same community ended, leading her to find another job elsewhere that was not compatible with her staying in the community. This choice was necessitated by the need to *support the four children left in Nigeria*, as is undisputed.

And more:

> The negative assessment of the abandonment of the community did not take into account the fact that, as recognized by the court-appointed expert of the second instance, this behavior was considered a form of protection for the girls, entrusting them to institutions; in this regard, the same special guardian acknowledged, in the report of the psychology service dated 3/06/16, that the integration of a Nigerian woman into a community could be hardly

> understood and accepted by her for various reasons attributable to the specific cultural roots of the woman.

In dissecting the extract of the judgment provided, it becomes evident that there are several instances where individuals are not fully represented but rather reduced to generalized traits or characteristics. This practice, known as objectification, essentially strips away the complexities of individuals' lives, rendering them as static entities rather than dynamic human beings with unique experiences and circumstances.

This objectification is often compounded by negative stereotyping, where individuals or groups are unfairly pigeonholed based on preconceived notions or biases.

Such stereotypes not only perpetuate harmful societal attitudes but also reinforce the concept of 'otherness', creating a divide between the individual or group being stereotyped and the dominant majority. Moreover, the language used in the judgment may exhibit signs of intergroup bias, where one group is favored over another, leading to the marginalization of certain groups within society.

Despite the greater availability and attention of the judges at the Juvenile Court of Milan, as emerged from the interviews conducted, this tendency is not always clearly reflected in the words expressed in the judgments issued. Despite being a collegiate body, in which different skills and professionalism collaborate, various issues have nevertheless emerged, as evidenced by extracts from judgments analyzed.

These criticalities can manifest themselves through insensitive or stereotypical language, questionable interpretations of the evidence presented, or inconsistent applications of legal principles. Despite efforts to promote greater attention and sensitivity towards minors involved in proceedings, it is evident that there is still room for improvement in the formulation of judicial decisions in order to ensure full and fair protection of minors' rights.

5.4.3 Translational Ambiguities

Another aspect that warrants attention pertains to the translational ambiguities that may arise when a judge is tasked with addressing foreign legal framework, in this case determining the recognition of a repudiation act. In our scenario, interpretive challenges may not solely emanate from consulting Codes in Arabic but could also derive from the translation of such Codes into other languages more accessible to the judge, such as French.

This scenario unfolded in 2010 at the Court of Aosta when the judge, relying on the French translation of the Moudawana, or Guide pratique du Code de la famille, encountered several issues. Among these, one prominent concern is the ambiguity of terms selected in the French version for the translation of the word "repudiation," in Arabic ṭalāq, rendered in French as divorce sous contrôle judiciaire. Despite the Arabic version retaining the term ṭalāq, the French translation, to sidestep using the term répudiation, opted for a milder expression, the Italian equivalent of which is "divorce under judicial control". Italian judges, perhaps lacking expertise in Moroccan family law, may mistakenly perceive the foreign and domestic institutions as synonymous, without fully grasping the significant distinctions between the two.
This is evident in the judgment of the Court of Aosta, where various expressions were used, not entirely accurate, such as: "judicial proceedings initiated by the husband to obtain divorce from the wife due to the unsustainability of family life", "a first revocable divorce," and finally "a divorce for reasons of discord," the latter potentially causing further confusion as it refers to another institution provided for by the Moudawana known as šiqāq, or "divorce for discord" (Ascanio, 2012).

Another case (Tribunale di Padova, 21/02/2017) allows reading the way Italian judges express themselves, through the term "immediate divorce", which would seem universal or, in any case, endowed with a corresponding semantic field in all languages. Thus, at least, Italian jurisprudence seems to treat it almost uniformly. In all judgments on the subject (Ricca, 2017), from Supreme Court rulings to those issued by lower courts, there is not the slightest hint that this expression could have a different meaning[51].
The connotation of immediacy extends beyond mere temporal considerations or chronological duration. Whether a divorce can be categorized as immediate hinges upon one's conceptualization of the relationship, along with the corresponding legal prerequisites and ramifications arising from the spouses' mutual decision to dissolve their marital ties. Immediacy, as implied by the Court of Cassation in the aforementioned ruling, should be evaluated in light of the determination and, even prior to that, the recognition of the irreversible breakdown of the marital bond. The period of separation essentially serves to solidify the spouses' resolve and, consequently, to confirm the irreversible nature of the relationship's dissolution.

[51] See, for example, Tribunale di Parma 9/06/2014, n. 599, Cass. Sez. I civ. n. 16978/2006.

The term "immediate divorce" and the notion of "immediacy" itself are intrinsically linked to the ideal aspects of marriage, as mentioned, as well as governed within various legal systems, and to the corresponding "ethical-legal" implications attached to the (potential) requirement of a mandated period of separation between the spouses' decision to terminate the marital bond and the actual dissolution sanctioned by the court.

In the absence of due consideration for the semantic and axiological backdrop inherent in the concept of marriage across various legal frameworks, understanding the term "immediate divorce" becomes notably intricate. It could be construed as referring to a divorce directly sanctioned by the agreement of the parties alone, thereby excluding judicial intervention. Alternatively, it might signify a decree issued promptly, sidestepping any investigative process or delays in executing the dissolution consented to by the spouses.

Moreover, there is the prospect that in certain legal-cultural contexts, the notion of "separation" and hence a "non-immediate divorce" could be devoid of relevance or incompatible with the prevailing understanding of spousal relationships. Consequently, labeling and translating divorces under such legal systems as "immediate" would amount to a betrayal of interpretive fidelity and the imposition of Italian (including legal) cultural norms onto the translated culture (Ricca, 2017).

The judges in Padova have adopted the terms of the "conditions" agreement reached by the spouses in accordance with Article 114 of the mentioned Moudawwana. The judgment's wording suggests that the agreement pertains to the concepts of sadaq, 'idda, and mut'ah, as outlined in Article 84 of the Moudawwana, presented in the first part of this chapter. Specifically, the sum of 2,000 euros transferred by the husband to the wife is classified as payment "in settlement and partial fulfillment of any amount due under Moroccan law" as sadaq, consolation gift (mut'ah), or maintenance during the legal period, or as per Italian law. The ruling indicates the woman's acceptance of the sum. Articles 84 and 114 of the Moudawwana address sadaq, 'idda, and mut'ah as essential prerequisites for calculating the financial aspects negotiated in the divorce settlement.

In this case, the Italian judges interpreted the sums outlined in the agreement between the spouses, regarding the amount to be paid (in accordance with Moroccan law) in a single payment, as fulfilling the requirements of a lump sum divorce allowance under Article 5.8 of Law 898/1970. However, the judgment does not delve into the assessment of all relevant factors that the judge must consider when determining the lump sum allowance. The evaluation of the solution's fairness appears cursory, if not entirely lacking. What remains unaddressed is whether a prior understanding of the cultural significance, experiential implications, and connection with the concrete marital experience of young individuals of Moroccan descent, as well as the corresponding institutions of

sadaq, 'idda, and mut'ah, was necessary for assessing the adequacy of the allowance. Indeed, these institutions serve as the legal and substantive foundation for determining financial (and other) aspects of relationships between spouses seeking to dissolve their marital bond in the Moudawwana and Islamic legal tradition.

Sally Engle Merry (2006) explores how these transnational ideas and rights make sense in various local social contexts by changing their 'form' through 'translation'.

The theoretical question of how rights are adopted in very different cultural contexts is part of a broader question of how ideas and institutions move from one socio-cultural context to another, thus raising the issue of their translation. Taking a socio-semiotic perspective into account, meanings are produced by the interaction between sign systems and social actions, so words can be interpreted differently by human rights activists and their targets.

> The power of the translator is her ability to set the terms of the exchange and to channel it, but her vulnerability is her ability to persuade people with grievances to accept her definition of the problem and to extract financial and political support from states and donors. [...] The translator must walk a fine line between too much replication, in which case the new ideas will lose their appeal to local communities, and too much hybridity, in which case the reforms will lose the support of the global community, including its funding and publicity (Merry, 2006, p.48).

Those involved in 'translating' rights work in complex conditions where multi-vocal messages are open to different interpretations, thus transforming rights ideas into familiar symbolic terms to empower global movements by combining transnational rights concepts and local ways of thinking about different claims.

These figures, who may be local activists, lawyers, academics, or judges, as seen, negotiate between parties in a force field where they find themselves in both a position of power and vulnerability.

The realms where individuals fulfill their personal lives are increasingly transcending national boundaries. The sphere of personal experience and rights attainment extends beyond the confines of territorial states, thereby challenging the notion of legal subjectivity tied solely to ethnicity or nationality. The concept of marital relationships is intertwined with the cultural and ethical dimensions of marriage and family, each shaped by diverse societal norms and legal interpretations. Understanding the dissolution of marriage in various cultural and legal contexts necessitates a deep comprehension of the institution of marriage itself. However, a detached analysis solely grounded in legal norms and international private law not only presents an incomplete picture but also overlooks the complex historical and cultural underpinnings embedded within legal institutions. This can lead to discriminatory outcomes when navigating translation processes between legal systems, particularly for individuals from diverse cultural backgrounds. Consequently, legislative

and constitutional frameworks serve as vital benchmarks for assessing the compatibility of extranational elements with the foundational principles of different legal systems, thereby emphasizing the importance of historical awareness and intercultural sensitivity in legal discourse.

5.4.4 Discursive Strategies and Legal Reasonings: Power Relations

> The State imposes, particularly in reality and in minds, all the fundamental classification principles - such as sex, age, "competence", etc. - through the imposition of divisions into social categories - such as active/inactive - which are the product of the application of cognitive "categories", thus reified and naturalized; it is at the origin of the symbolic effectiveness of all institution rites, those underlying the family for example, as well as those exercised through the functioning of the educational system, which establishes, between the chosen and the eliminated, enduring symbolic differences, often defined, and universally recognized within its scope. The construction of the State thus accompanies the construction of a sort of common historical transcendental which, at the end of a long process of incorporation, becomes immanent to all its "subjects". Through the framing it imposes on practices, the State establishes and instills common symbolic forms of thought, social frameworks of perception, intellect, or memory, state forms of classification, or, better, practical patterns of perception, evaluation, and action (Bourdieu 1997, p. 183).

As presented in this chapter, in numerous legal rulings, culture tends to be depicted as a static trait of the individuals involved, detached from their socio-economic backgrounds or personal narratives. This simplistic view fails to acknowledge the dynamic and multifaceted nature of culture, reducing it to a fixed characteristic rather than recognizing its intricate connections with various aspects of a person's life. By oversimplifying culture, these judgments overlook the intricate layers of cultural identity and its intersection with factors like socio-economic status, education, and personal history.

This oversimplification often results in stereotyping and pigeonholing individuals based solely on their cultural heritage, thereby perpetuating biases and reinforcing power disparities within the legal system. However, it is crucial to acknowledge that in cases where there is no explicit reference to culture, this absence can be interpreted as a form of neglect or oversight by the judicial institution regarding the influence of culture on the cases at hand.

The omission of cultural considerations may signify a lack of awareness or understanding among judges regarding the significance of culture within the legal realm. It could also indicate a tendency to overlook culture as an inconsequential factor in judicial deliberations, prioritizing standardized legal frameworks instead. This perspective might stem from a uniform view of justice that fails to recognize diverse cultural perspectives and individual contexts. Furthermore, the absence of cultural

references may demonstrate a lack of sensitivity towards the cultural backgrounds and traditions of the parties involved in legal proceedings, resulting in judicial decisions that inadequately address the cultural needs and circumstances of the individuals, thereby compromising the fairness and integrity of the rulings.

Furthermore, the failure to address culture and its diversity may signal a disregard for its significance. To illustrate, a critical issue to note is the linguistic dimension. The absence of a call for a cultural and linguistic mediator stands as the initial indication of systemic injustice and power dynamics within the legal system. Language serves as the primary tool of exclusion and marginalization, acting as a barrier that silences certain voices and renders them powerless within the judicial process.

This oversight in linguistic and cultural acknowledgment carries substantial repercussions, hindering access to justice for individuals who speak different languages or hail from non-dominant cultural backgrounds. Hence, the absence of cultural recognition not only reflects a narrow conception of justice but also represents a form of symbolic violence that sidelines and isolates culturally diverse communities.

This unequal distribution of power within the legal field mirrors broader societal structures, where access to resources and opportunities is often determined by one's linguistic and cultural capital. Thus, addressing the absence of translators in legal proceedings is not only a matter of rectifying institutional violence but also of challenging entrenched power dynamics within the legal field and promoting greater inclusivity and equity for all individuals, regardless of their linguistic background.

One pressing issue concerns the expression of social inequality within legal proceedings, specifically addressing the challenges faced by culturally disadvantaged individuals in effectively navigating the legal system. Within this context, there is an emphasis on the linguistic and political skills demanded by the legal framework, wherein litigants are expected to articulate their grievances calmly and construct compelling cases for the legal framework. This dynamic is further complicated by questions posed with assumptions about linguistic literacy and cultural norms, which can disadvantage some individuals while favoring others. Such disparities highlight the unequal distribution of resources necessary for meaningful engagement in legal and political discourse, notably influenced by factors like access to education and linguistic proficiency.

This unequal landscape can be interpreted as a form of symbolic violence, wherein individuals are effectively silenced or marginalized due to their inability to express their experiences and grievances within societal structures.

The issue surrounding legal language fundamentally involves a common approach among all involved parties. Improving the technical language used in legal documents, appeals, objections, and other legal actions can only be achieved through collective efforts. This endeavor requires judges and lawyers to share a common goal of cultural advancement, aimed at "modernizing" legal terminology to better suit the complexities of our times and future challenges. Furthermore, addressing the linguistic challenges demands a dual perspective. Revamping legal language is essential not only for enhancing the quality of judicial outcomes but also for expediting legal proceedings and decisions. By streamlining language, it is possible to focus the energies more effectively on intricate matters, allowing for more time and detailed deliberation. Simultaneously, the aim is to provide widespread, efficient responses to routine, standardized, or less complex issues, ensuring adequacy while simplifying processes (Brancaccio, 2021).

The issue of the language as a discourse of power is of course related also to power dynamics and ideologies within legal language, and not only concerning the access to the justice system.

> […] the details of legal discourse matter because language is the essential mechanism through which the power of the law is realized, exercised, reproduced, and occasionally challenged and subverted. Most of the time, law is talk: the talk between disputants; the talk between lawyers and clients; the courtroom talk among lawyers, parties, judges, and witnesses; the legal talk that gets reduced to writing as statutes and judicial opinions; and the commentary on all of this other talk that people like us engage in (Conley, O'Barr, 1998, p.129).

This eloquent excerpt from the work of Conley and O'Barr (1998) now sets the stage for the concluding section of this chapter.

Within the scaffolding of this thesis lies a foundational concern for the power dynamics and ideologies conveyed through legal language, as well as the representations crafted by judicial pronouncements.

At a theoretical level, the study of law intersects with the domain of power and ideology, where discourse serves as a battleground for the perpetuation and challenge of societal norms and hierarchies. Jurisprudential language, therefore, becomes a potent force that not only reflects but also actively constructs and maintains power structures within society. Ideologies embedded within legal discourse subtly dictate what is normative, permissible, and deviant; these are exemplified in the intricacies of case law, where the adjudicatory arena transforms into an ideological echo chamber.

The examination of power dynamics involves investigating which discourses rise to dominance and which are suppressed, as well as understanding the mechanisms and strategies employed within

various discourses to achieve this. A prevailing discourse within the system serves as a potent instrument for marginalizing alternative discourses, often presenting itself as unquestionable truth. Occasionally, the technical legal discourses, mentioned earlier, function by selectively excluding certain identities or relationships while including others, thereby wielding considerable influence (Gunnarsson, Svensson, Davies, 2007).

Examining power dynamics and ideologies becomes especially poignant when analyzed through the lens of representations in judicial decisions. How parties are depicted within courtroom narratives—whether as autonomous agents, vulnerable subjects, or deviant actors—carries implications for how the judiciary conceives of citizenship, agency, and responsibility. The representations found in legal decisions, from the subtle nuances of language to the starkness of legal categorizations, construct images of social actors that echo throughout the chambers of public consciousness.
It is possible to observe how discursive strategies within legal discourse serve to reinforce existing power relations within the field of law. Bourdieu's concept of normalization and discipline is readily observable in legal discourse, where language is used to normalize certain behaviors and identities while marginalizing others. Legal professionals leverage their symbolic power and capital to shape the narratives presented to the court, reinforcing their authority in the legal realm.
Legal professionals, such as judges and lawyers, wield considerable influence by selectively excluding certain identities or perspectives while privileging others.
This selective exclusion and privileging of discourses reflect the distribution of symbolic capital within the legal field, where those with greater cultural capital dictate which discourses are considered legitimate.
Within the judicial system, there exists a clear hierarchy of authority, with the court wielding ultimate power over legal proceedings and outcomes.
The court's language and tone convey authority and legitimacy, reinforcing its position as the arbiter of justice (thinking about, for instance, the court dismisses the mother's arguments against the decision, citing evidence from reports and expert opinions to justify its findings).

Examining power dynamics within legal decisions necessitates an understanding of legal culture, which significantly influences the discursive strategies employed by judges and legal practitioners. Critiques of legal reasoning by the Court of Cassation in the Italian legal system underscore the role of individual legal actors in shaping legal discourse, emphasizing the dynamic nature of legal culture.
Despite efforts to challenge prevailing legal norms and conventions, stereotypical language continues to persist in addressing certain concepts, highlighting the ongoing struggle to address

systemic biases within the legal system. The tools wielded by dominant groups to assert their ethical, economic, and cultural dominance are numerous and remarkably efficient, often concealed behind the facade of powerful rhetoric and the notion of a unified and homogeneous legal culture among the populace serves as a poignant illustration of this phenomenon.

Concerning legal culture, which significantly shapes discursive strategies employed by judges and legal practitioners, it is also interesting to compare it with the manner in which individuals perceive their roles and utilize the margin of maneuver within the justice system, which significantly influences their creativity and inclination toward innovation.
An intriguing finding in the analysis of judgments within the Italian legal system is the frequent critical review of legal reasoning by the Court of Cassation, particularly scrutinizing decisions made by judges of the ordinary courts. Notably, these critiques are often emanated by the same judge, highlighting the significance of individual legal actors in shaping legal discourse and challenging prevailing legal norms and conventions.
Such a finding unveils a compelling aspect of the dynamics within the judicial apparatus. It underscores the role of the Court as a pivotal institution in overseeing the application and interpretation of the law, ensuring consistency and adherence to legal principles across lower courts. The fact that these critiques often stem from the same judge within the Cassation sheds light on the significance of individual legal actors within the legal system. It highlights the agency and influence of these judges in shaping legal discourse and challenging prevailing legal norms and conventions. This phenomenon highlights the idea that legal culture is not static but is continually shaped and contested by individual actors within the legal profession.
However, it is worth noting that despite the well-meaning intentions and the commendable critical efforts exhibited in numerous Court of Cassation judgments responding to decisions of lower courts, there remains an evident presence of stereotypical language in addressing certain concepts.

5.5 Cultural Expertise

As Fairclough (2001) notes, power relations are not just about domination but also involve negotiation and resistance.

In some cases, driven by personal, material, and/or political gains from presenting themselves as culturally driven, immigrants are inclined to adopt a simplistic model of themselves.

This inclination is further encouraged by policies that advocate for 'respect for their culture', often perceiving immigrants as homogeneous bearers of a static cultural identity, as emerged through this chapter. This creates an environment where articulate spokespersons emerge to assert what constitutes 'the culture'. Consequently, government agencies and immigrants collude in perpetuating a version of culture and a perception of 'man' that detrimentally impacts the welfare of particularly vulnerable members of ethnic minorities and immigrants at large. As pointed out by Wikann (1999), “many immigrants are also actively reappropriating this model” (Wikann, 1999, pag.58).

An interesting example of immigrants who are inclined to adopt a culturalist and simplistic model of themselves emerges through the case of the Court of Milan (2015) n. 10554, which revolves around a marital dispute between a couple. The union originated in Mauritius in January 2002 and was later transcribed in the civil registry of Milan in 2013. The crux of the matter cites intolerable conditions within the marriage due to alleged domineering and violent behaviors:

> With a memory deposited on May 7, 2014, Mr. S. - stating, as in Mauritian culture, 'the dominant role within the family nucleus is centered on the man who deserves respect' - indicated in the contemptuous, denigrating, and even violent behavior exhibited by his wife towards him, the origin of the couple's tensions, stigmatizing her poor educational/normative capabilities towards their son, towards whom she allegedly prevented him from 'fulfilling his role as a father'.

In a scenario such as the one described above, what actions can social scientists take? Firstly, it is crucial to recognize that our conceptualization of culture is widespread. The belief in culture as something static, fixed, objective, and uniformly shared by all members of a group is a construct that anthropologists have contributed to disseminating. Similarly, the notion that culture dictates people's actions without considering their motivation or will is another misconception perpetuated by anthropological discourse. Moreover, the relationship between power and culture is an aspect that anthropologists have been slow to acknowledge and even slower to address.
In essence, while we have internally reassessed traditional notions of culture, how proactive have we been in disseminating our new understandings to the wider public?

It is clear that discussing an individual's cultural minority background in court presents a formidable challenge. As presented in the first chapter of this thesis, some scholars have contended that acknowledging culture as a defense risks legitimizing it as an excuse for some conduct (Coleman, 2001). Conversely, others have argued that considering culture could safeguard minorities against

the inherent bias of majority cultural norms within the legal system (Parekh, 2014), allowing courts to delve deeper into the context and motivations behind specific actions, thus aiding in more nuanced assessments of an individual's culpability (Renteln, 2004; 2014).
Here, the inquiry revolves around the convergence of cultural elements and legal discourse, forming its core focus. The utilization of cultural proficiency within legal contexts raises significant questions: is it integrated into legal proceedings? What motivates its application? And how does it influence the judicial system and court proceedings? Cultural expertise manifested through expert guidance and testimonies, has long been a significant aspect of applied anthropology. Indeed, throughout the history of anthropology, the utilization of anthropological knowledge in conflict resolution, legislative processes, and governance has been common, for better or for worse. The expert, acting as a mediator in various capacities, may not inherently belong to the formal legal framework but remains tethered to it, serving as a bridge between the realms of 'cultural' and legal spheres.
They symbolize the frequent disagreements and misunderstandings between these two domains.

Livia Holden (2011) presents the following definition of cultural expertise:

> Cultural expertise is the special knowledge that enables socio-legal scholars, anthropologists, or, more generally speaking, cultural mediators, the so-called "cultural brokers", 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). [...] cultural expertise differs epistemologically from the typical cultural defence. It not only preceedes cultural defence, necessarily, but it also exceeds cultural defence, by which I mean it preceedes it temporally within the proceedings and exceeds it in scope because it can be requested for a wider range of cases than those of criminal law (Holden, 2011, p. 2).

Similar to any other expert summoned to provide testimony in court, the aim of cultural expertise is to utilize particular and specialized knowledge to address a specific set of circumstances presented to the expert. These considerations must be developed independently of the legal resolution of the case at hand.

A case in which an anthropologist was involved as a cultural expert concerned the revocation of the adoptability status of a child, daughter of a man from the Dominican Republic.
In judgment No. 61 of 17 September 2008, the Juvenile Court of Trieste declared that the child was adoptable, finding that the state of abandonment existed because "the activities carried out by the

child's parents, their conduct and the lack of a certain economic situation were a sufficient condition to confirm the state of abandonment of little Nicole".

The Court came to this conclusion after obtaining some evidence, including reports from social workers, who supported the inadequacy of the family environment and the parents' general lack of interest in their daughter.

The father of the child subsequently requested the revocation of the declaration on appeal and in the application, which challenges the first instance decision, it can be read that:

> In making this assessment, however, the social services used criteria and parameters drawn exclusively from the standards of behaviour of Italian families, without taking into account the peculiarities of the customs, habits and conception of social and family relations of the Dominican reality. The social workers, for example, recognised that leaving the child in the care of other relatives or acquaintances was a determining factor in the state of abandonment, without taking into account that within the Dominican family this is completely normal and habitual.

In this case, attached to the appeal judgment in question is a copy of the study by Dr Federica Rossi, an anthropologist who answered the question posed by the lawyer for an assessment of cultural constructs in the Dominican area.

We read that as a consequence of a past marked by long periods of dictatorships and an economic, social, and political situation strongly characterized by deep poverty, the condition of women and the concept of family itself are very different; due to specific cultural choices, conceptions of family can be varied and very different from what we consider typical of Western culture and it is therefore important not to limit our view on the basis of what is most familiar to us, thus excluding other conceptions of family. Because of the colonial past and slavery, a cultural model of precariousness and multiplicity was formed in man-woman relationships, which were forbidden to marry by the masters, who rather encouraged sexual freedom, marginalization and deresponsibility of men. In this area, therefore, continues Dr. Rossi, there are phenomena of matrifocality that are connected to systematic male multi-parenting. It is in fact accepted, especially in the poorer social classes, a form of free marriage, whereby the man generally has more than one family at the same time, leaving the children to live with the mother or with her relatives.
As a result, it is the women who run and manage the family organization themselves.

Another point on which the anthropologist's report focuses is the young age of children when they leave home, leaving the family nucleus much earlier than young Italians, for example.

> Growth, education, cannot be treated univocally, one should not assume ethnocentric attitudes and absolute judgement, when faced with different cultures and different contexts

> and different historical facts, leading to different cultural constructs that result in the right to identity, which is guaranteed to every human group. [...] In Western culture, a family is often specifically defined as a group of people affiliated by consanguineous or legal ties, such as marriage or adoption; but this is not the absolute definition. [...] In essence, there can be no single definition for any area of human concern: one must take into account the various aspects that constitute ways of living and seeing the world, one should simply pay attention to the cultural contexts that affect us all.

The anthropologist therefore invites us to think in a non-ethnocentric way, avoiding to take absolute positions regarding our idea of family and child-rearing, actually giving the Court the possibility to try to reason differently; this is also the task of *cultural expertise,* which thanks to the tools of the anthropological discipline tries to restore depth and criticality to culture in the legal context, proposing a more complex and non-objectivized vision.

In 2012, the Juvenile Court of Piedmont and Aosta Valley initiated proceedings to remove four Roma children from parental custody. In this case, a specialist in neuropsychiatry was called to testify as CTU and an anthropologist as CTP.[52] In this case, the original judicial decision is unfortunately not available, but the analysis relies on a review made in a scientific journal.

The family's situation, Decarli (2019) explains, was rather complicated; difficult economic conditions, the father being ill and initially reluctant to start treatment, and the mother having been previously arrested for begging. Teachers also reported some bruises on one of the children, but the causes were not clarified due to some language difficulties and contradictory versions. Although both experts agreed that the children were in a delicate situation, the reports they provided to the court disagreed on some crucial issues.

In the article by Ciccozzi and Decarli (2019), a rather accurate account of the differences between the experts called to testify is reported, whose original versions could unfortunately not be retrieved as they are not publicly available.

> The CPT's analysis suggested that the CTU's historical and cultural/educational background hindered her ability to grasp the expressive modes specific to the family's culture. According to the CTP, the CTU's lack of sensitivity regarding the family's socio-cultural context prevented her from understanding the specific parenting and educational model at issue (an assessment of which was requested by the court). By constantly referring back to her own culture's family model, the CTU was unable to interpret what made these parents' relationship with their children meaningful according to *their* worldview (i.e., parenthood for this particular Roma group). According to the CTP, the CTU regarded evasive answers as examples of incoherent thought or an unwillingness to engage in meaningful communicational exchanges. On the contrary, such answers could

[52] It should also be pointed out that the Court involved a translator, but made the mistake of calling a Romanian, not a Roma, interpreter.

> have been the result of both a fear of revealing something personal (due to the social stigma they had long suffered for being Roma) and difficulty in understanding why they were being required to open up to a stranger. Furthermore, the CTU was unaware that some Roma groups are loath to answer direct questions and so perceived their different way of managing conversation as a desire to mislead. According to the CTP, instead, "it was clear that the parents tried to tell their history to the CTU but they could not do it according to the latter's modalities". Again, the CTU did not understand the parents' relationship with Romania, so the fact that they had initially gone to Italy (to a "nomad camp") while leaving their oldest child behind, in the care of grandparents, was regarded as neglect rather than a protective measure. The CTU stated that the parents were incapable of meeting their children's needs. (Ciccozzi, Decarli 2019, p. 42).

The parents were therefore declared incapable of meeting their children's needs on the basis of the statements provided by the court-appointed expert witness, who was not willing to take into account the particular socio-cultural context of the family in question, referring exclusively to her own experience and educational and training background.
Both the first instance and appeal judgments ignored the mediation attempts and the report of the CTP; without questioning possible 'cultural' misinformation provided by the CTU, the Court declared the children adoptable, removing them from the custody of their parents, whom they never saw again.

It is clear that even the cases presented here somewhat simplistically refer to the broader situation, which inherently encompasses not just cultural but also socio-economic factors. Hence, they should be assessed considering numerous aspects. What is crucially important, though, is the necessity to renegotiate power dynamics, often established through specific language usage, as we have observed. Renegotiating and implementing forms of resistance, even just to bring attention to the issue, is imperative, even if there is not a straightforward answer or solution to the challenges posed here.

5.6 Conclusions

Members of every society seem to possess extensive cultural knowledge about disputing and have a sophisticated understanding of how to navigate various legal and quasi-legal situations. But where does this knowledge originate? Apart from its inherent academic interest, this question holds significant practical importance for those seeking to address problematic aspects of disputing behavior.

In a society like ours, characterized by a complex and professionalized dispute resolution system, the question of origins becomes intricate. It prompts inquiries into how legal professionals acquire the specific discourse styles and strategies that define their practice. Legal discourse stands out on multiple levels, starting with its use of specialized jargon. Lawyers and judges routinely employ terms that are not part of the everyday vocabulary of laypeople. However, other aspects of the legal profession's discourse are more subtle. For instance, legal professionals have a tendency to reshape their clients' narratives in predictable ways by imposing a specific discourse structure on them, and similarly, the legal system favors certain narrative structures and logical frameworks (Conley, O'Barr 1998).

Thus, each legal system possesses its unique lexicon, wherein the language of law encapsulates the historical and traditional context of a society. Consequently, the regulatory dimension often intertwines and merges with social experience. However, this semantic and cognitive blending results from the gradual convergence of values towards practical effectiveness and the interplay between the state of affairs and the significance of these values, alongside their reciprocal dynamics.

Legal categories are structured within normative statements as if they were empirical objects or phenomena, portraying law not solely as a social fact due to its binding force, but also due to its capacity to shape and communicate behavioral norms. Within the discourse of each legal system and normative enactment, there exists an underlying semantic backdrop—a form of semantic social contract—underpinning the obligatory force of its provisions. This semantic framework is coextensive with the values and objectives that serve as the presupposition for both institutional action and the resultant obligations. Conversely, the prescriptive nature of law presupposes a factual world shaped by cultural choices and cognitive frameworks, collectively shared by a community immersed in communication. Consequently, individuals from diverse cultural backgrounds, particularly foreigners, often find themselves entangled in semantic mazes when confronted with national law, navigating paths fraught with unforeseen obstacles and concealed inequalities from their perspective (Ricca, 2023).

Although it would have been beneficial to have access to more first and second-instance judgment texts to further enhance our analysis, what emerges is that the cultural aspect is often addressed ambiguously or problematically, portraying it with objectified and stereotyped traits that unfortunately overlook other crucial factors.

However, this is not solely attributable to judges. In fact, the judgment represents merely the culmination of the entire judicial process; this simplistic approach appears evident from the

preliminary stages of investigation conducted by social services and technical consultants tasked with evaluations.
Interpreting conflicts through ethnic or racial lenses frequently results in shifting the discourse solely to the cultural sphere, thereby sidestepping the underlying socio-economic foundations. By ethnicizing groups or social dynamics, it effectively obscures their subordinate or marginalized status within the broader global society, while simultaneously erasing internal disparities among ethnic groups in terms of class, resources, or influence.
Consequently, there is a tendency to portray the sources of disparities and socio-economic discrimination among individuals as inherent and cultural in nature (Aime, 2020).
Through the utilization of broad, all-encompassing categories that oversimplify identities and narratives, the distinct identity of the 'immigrant' is constructed - inherently divergent, deemed incompatible with our norms, and utterly resistant to assimilation.
While there exists the potential at an individual level to perceive 'our' foreigner through relational and personal lenses, shaped by our own perspectives and judgment capacities, fostering a sense of relative equality, once we transition to a collective context, 'me/him' (or her) transforms into 'us/them', resulting in a rigidification that frequently complicates any form of negotiation.

The issue of language of judicial decisions is primarily cultural, and its progression and enhancements are intricately linked to a shift in educational paradigms.
It is worth retracing the primary highlights of the 2021 Management Program Report (Relazione al programma di gestione 2021) from the Cassation Court, highlighting its innovative aspect. Notably, it marks the first explicit exploration of such a theme within an organizational document of the Supreme Court.
Of indisputable significance is the underlying principle that language and thought mutually influence each other—a dyad where language serves both to communicate and embody a "worldview," while also shaping it. Within the organizational framework, language is construed as emblematic of the individual and collective values of a society within a given historical context, reflecting and simultaneously contributing to their formation.
Hence, there is an undeniable imperative to delve into the construction of legal reasoning, the employed categories, and their adaptability to evolving societal norms and sensitivities, particularly concerning gender biases and all forms of discrimination (Brancaccio, 2021).

As pointed out by Zan (2003):

All professions represent important agents of the institutionalization and institutional consolidation process of the respective organizations, but they also act as a filter that isolates these organizations from society, slowing down or hindering their processes of adaptation, transformation, and "modernization." Moreover, primarily operating on the cultural and normative level, they evade individual and targeted interventions for organizational restructuring and undergo their evolution in an entirely impersonal and long-term manner. However, I remain deeply convinced that unless there is a partial modification of the professional culture common to law professors, lawyers, judges, court clerks, ministerial staff (and related parliamentarians), all other interventions of any kind are destined to fail (Zan, 2003, p.116)

6. Conclusions

After completing the extensive textual journey of presenting the theoretical background and the analysis of fieldwork, it is now appropriate to succinctly review the key analytical findings, placing them within a broader context. This includes relating them to the initial questions posed and situating them within relevant disciplinary debates.

This work aimed to understand how lawyers and judges perceive, assess, and manage sociocultural diversity in their daily decision-making. Such investigation was guided by several research questions: How is culture used by lawyers and judges? Which definitions of culture emerge? Do they consider the cultural background as relevant in certain legal cases? Do they contact an expert, and on what grounds? Which kinds of knowledge are considered cultural expertise? What are the necessary tools for lawyers and judges to better comprehend and evaluate the cultural element in the broader legal context?

In essence, this research endeavors to make a significant contribution to the sociological examination of managing cultural diversity in Italian courtrooms, addressing a relatively neglected topic within civil law, particularly concerning family and juvenile law. This study identifies gaps in current research and aims to bridge them by analyzing the intricacies of cultural diversity in legal proceedings. In addition to focusing on legal culture as a fundamental aspect, the research emphasizes the importance of considering the organizational context of courts. It stresses the need to move beyond a purely cultural lens and incorporate broader organizational dynamics that influence legal decision-making. By integrating these perspectives, the research seeks to provide a more comprehensive understanding of how cultural diversity is handled and perceived within the Italian legal system.

In summary, regarding the research questions, it can be said that the analysis of two types of data—semi-structured interviews and judgments—corresponds to two distinct but closely related lines of analysis.

The semi-structured interviews played a crucial role for several reasons. They facilitated a thorough exploration of participants' personal perspectives, promoting a more intimate and direct exchange. Additionally, these interviews revealed aspects of the court's organizational dynamics that would otherwise have remained hidden. They also enabled access to diverse viewpoints and criticisms, essential for analyzing both organizational and political dimensions. Notably, discussions of actual cases with lawyers and judges during these interviews aimed to discourage overly idealistic responses and mitigate the impact of social desirability bias.

On the other side, studying judicial decisions provided tangible insights into legal professionals' perspectives, shaped by individual agency, organizational contexts, and internal legal culture. While interviews allowed for a focus on individual viewpoints and reasoning, analyzing decisions laid the foundation for a different type of analysis. Given that judgments serve purposes distinct from those of my study, they offered a deeper exploration of how categories, such as family, children, and childhood, are understood and interpreted within this context.

First of all, concerning the very core of this work, the first relevant piece of data is that participants in the study exhibited a consistent pattern of avoidance when asked about the fundamental meaning of culture, suggesting a reluctance or complexity in articulating their conceptualizations.

Despite this avoidance, some interviewees provided diverse and insightful perspectives on culture, highlighting its multifaceted nature beyond ethnic or national boundaries, recognizing it as encompassing social norms, customs, organizational cultures, upbringing, education, and social conventions, thus as something influenced within legal contexts.

However, upon examining the meaning of culture as discussed when not specifically asked about it, a less nuanced and complex approach becomes evident.

Rather than offering detailed conceptualizations, lawyers and judges tended to use culture in a simplistic way, often equating it solely with geographical origin, leading to a more reified view. Despite acknowledging a wide range of cultural characteristics and definitions, when discussing various topics, legal professionals primarily referred to "culture" in terms of idealized attributes associated with specific national groups.

The investigation demonstrates that lawyers and judges, operating within the framework of established state law and employing available legal tools, are notably influenced by the distinctive characteristics of their professional legal cultures, resulting in specific expressions of professional pragmatism in their practices.

Through synthesizing extensive semi-structured interviews with legal professionals, we gain a comprehensive understanding of how cultural diversity profoundly impacts the legal landscape, particularly evident in the family and juvenile law domain.

Legal practitioners consistently highlight challenges related to navigating linguistic and communication barriers, parental capacity assessments, and intricate familial dynamics shaped by cultural diversity, underscoring the importance of involving external figures like interpreters and cultural mediators, albeit without clear institutionalization of their roles.

In fact, the overall trend indicates an organizational inclination to delegate cultural considerations to external entities, often without a clear understanding of how these external services operate or the qualifications of the individuals involved.
However, during the interviews, participants highlighted the deficiencies and gaps within the legal system when handling cases that necessitate cultural expertise. Acknowledging the significance of cultural mediators, certain lawyers and judges emphasized the prevalent challenges, including the absence of standardized training and professional registries for these experts.
In this sense, it is fundamental to consider that in civil cases, there are established procedures and regulations, likely documented in a registry, that constrain freedom of choice in specific aspects of legal proceedings.
Additionally, they advocated for a more operational approach, proposing that cultural mediators could play a more effective role during the operational phase of interventions rather than in the decision-making process.
Furthermore, as emphasized by both judges and lawyers, the challenges encountered in integrating cultural mediation into services highlight the resistance and financial constraints associated with aligning legal processes to accommodate the nuanced understanding needed in cross-cultural contexts.
The reference to the challenge of affording consultants highlights the practical obstacles within the legal system, emphasizing the fundamental issue of inequality in access to justice. This illuminates the gaps in funding and, consequently, underscores the unmet need for experts who could greatly enhance the understanding of cultural complexities within legal proceedings.

Another noteworthy finding is the intricate influence of cultural factors, encompassing both internal legal culture and the cultural backgrounds of individuals involved in cases, on the timing and dynamics of legal proceedings. Within the domain of technical and legal procedures governed by codified frameworks, additional temporal considerations emerge, influenced by the scheduling of judges and lawyers. Delays in court proceedings, known as traversal times, can be significantly extended based on the availability of the assigned magistrate overseeing the case.
This highlights the importance of adopting a nuanced approach to navigate cultural complexities within legal settings. While legal procedures are inherently procedural, they are deeply impacted by the diverse legal cultures and institutional cultural contexts of those participating. Moreover, disparities in timing and dynamics are observed between ordinary courts and juvenile courts, attributable to differences in operational methods and the autonomy granted to judges.

In this sense, juvenile courts, designed to address individual needs, afford greater flexibility for judges to independently assess cases compared to regular courts. However, as discussed in this work, the level of procedural flexibility in both court types is intrinsically linked to the organizational and institutional context, ultimately influencing the efficacy of the justice system.
Therefore, a comprehensive analysis of culture necessitates simultaneous consideration of the culturalization process, incorporating an examination of legal culture and the analytical context to avoid overlooking the simultaneous construction of the "self" and the "other".
The dimensions of 'culture as communication,' 'culture as context', and 'culture as norms' are critical in understanding how judges and lawyers integrate foreign cultures into their legal framework for processing, emphasizing the necessity for adaptability and cultural competence in navigating the complexities introduced by cultural diversity within the legal field. Such concepts of culture are in fact intricately linked to the legal and organizational context within which judges and lawyers operate, therefore allowing to pave the way for a more nuanced and informed approach to cross-cultural engagement in legal processes.

As previously noted at the outset of this final discussion, a significant issue that emerged from the interviews was the tendency to employ a reductive and stereotyped understanding of the term "culture", even when participants were not directly questioned about it. In this context, the analysis of the court judgments was instrumental in addressing this issue, aided by a focused linguistic analysis.
In this sense, the judgment has proven to be a particularly valuable document.
The judge's decision is the outcome of a series of choices based on information sourced from both external and internal aspects of the legal system, guided by rules. Specifically, the legal rule undergoes conceptual analysis when examining the general criteria set by the legislature to understand how the formation of judicial decisions should be regulated in terms of form and substance. Alternatively, when viewed empirically, the legal rule becomes the factor that causally influences the behavior of various actors to varying degrees, followed more or less consciously and consistently in specific cases (De Felice, Giura, 2016).
The substantive aspect, or the content of the final decision, is shaped by the selective and partial decisions made by individual actors involved in a specific situation. Through their interactions, these actors establish decisional frameworks that influence the outcome for others involved.
The result of this process, as reflected in the judgment, demonstrates its institutional character because the judge, while operating within binding decision-making rules, "interprets" events based on categories defined by procedural and substantive norms. This adaptation of content to the

conditions necessary for a specific judgment involves exercising discretion permitted by these rules (Pennisi & Giura 2009; Quiroz Vitale 2012; Giura 2015).

Following an initial thematic analysis of the judgments, beginning with the foundational research questions aimed at understanding how cultural diversity manifests in the texts of the judgments, it was found that the primary themes addressed include: firstly, an investigation into the cultural context surrounding family structures and relations (with specific reference to marriage, divorce, and kafalah), with these decisions exploring specific geographical regions and foreign legal frameworks, revealing cultural norms and delineating gender roles. Secondly, cultural identity emerges as a central aspect, shaped by religious practices, ethnic backgrounds, and geographical contexts, thereby influencing individuals' behaviors and decisions.
When addressing cultural backgrounds related to family models a complex and critical framework emerges. Several challenges stand out in the assessment of foreign parents: firstly, there is a tendency to focus on the parent's interactions with social workers rather than their relationship with their child; secondly, there often exists a disconnect between those evaluating parenthood (the observers reporting on the facts) and those providing support services (the service providers), leading to mutual suspicion and uncertain intervention outcomes (Anostini et al., 2021); thirdly, migrant parents often have a limited understanding of internal institutional child protection systems, resulting in misunderstandings, especially when judicial intervention or placement in protective communities follows a request for help from the parent (Voli, Visentin, 2015); fourthly, meetings between foreign parents and their children in "neutral spaces" can hinder rather than facilitate the parent-child relationship due to time constraints and language restrictions (Beneduce, 2014); fifthly, difficulties related to marginalization or socioeconomic factors are sometimes pathologized instead of being addressed as cultural differences (Taliani, 2012); finally, the description of behaviors of foreign parents can be overly harsh and stigmatizing.

Building upon the initial methodological framework, Critical Discourse Analysis served as a crucial analytical tool to further explore the intricacies of the judicial decisions at stake.
Upon reviewing the Courts' deliberations on identity characteristics, it becomes apparent that there is a common inclination to generalize the traits of the applicants and objectify their characteristics. Terms like "Culture," "Muslim religion," "way of life," and "Cultural context" serve as examples of this trend of objectification and generalization of the applicants' traits.
Often, the use of objectifications and generalizations seems unavoidable, inherent in the operation of the law or legal reasoning (Peroni, 2014). Legal documents commonly adopt an objective and

impartial tone, reflecting the authority or expertise of the legal figure behind them, which can obscure their rhetorical and argumentative nature.

Nevertheless, depicting applicants through collective representations and objectified depictions of their traits gives rise to two distinct problematic scenarios. The first issue arises with negative stereotyping: when an applicant is reduced to and obscured behind an objectified trait or a generalized representation, the Court associates this trait or group with a stereotype that reinforces the concept of 'otherness'. This kind of stereotyping often embodies prejudice or bias toward a group, perpetuating its subordination.

The second problematic representation pertains to what is described as 'naturalizing': after reducing the applicant to an objectified trait or a generalized representation, the Court links this trait to an unchangeable core of the applicant's group identity. This mode of reasoning is underpinned by two forms of essentialism: firstly, attributing specific characteristics to a fixed 'essence', thereby 'naturalizing differences that may be historically variable and socially constructed'; and secondly, treating these characteristics as defining features for all individuals within the category.

Analyzing power dynamics and ideologies takes on particular significance when viewed through the perspective of representations in judicial decisions. The portrayal of parties within courtroom narratives—as autonomous agents, vulnerable subjects, or deviant actors—has implications for the judiciary's conception of citizenship, agency, and responsibility. The representations found in legal decisions, from nuanced language choices to clear legal categorizations, shape images of social actors that resonate in the public consciousness. Discursive strategies within legal discourse can be observed reinforcing existing power relations within the legal field.

Legal professionals, including judges and lawyers, exert significant influence by selectively excluding certain identities or perspectives while privileging others. This selective exclusion and privileging of discourses mirror the distribution of symbolic capital within the legal field, where individuals with greater cultural capital determine which discourses are deemed legitimate.

Despite efforts to contest prevailing legal norms and conventions, stereotypical language persists in addressing certain concepts, underscoring the ongoing challenge of addressing systemic biases within the legal system. The tools utilized by dominant groups to assert their ethical, economic, and cultural dominance are numerous and remarkably effective, often hidden behind powerful rhetoric. The notion of a unified and homogeneous legal culture among the populace serves as a striking illustration of this phenomenon.

The interplay between legal culture and individual agency within the justice system is crucial, influencing discursive strategies and innovation among legal practitioners. The analysis of Italian

legal judgments revealed frequent critical reviews of legal reasoning concerning cultural diversity by the Court of Cassation, scrutinizing decisions made by lower court judges.
These critiques, often from the same judge, highlight the pivotal role of individual legal actors in shaping legal discourse and challenging established norms, although there remains an evident presence of stereotypical language in addressing certain concepts.
This dynamic underscores the Court of Cassation's role in ensuring consistency and adherence to legal principles across lower courts, emphasizing the agency and influence of individual judges in shaping the legal landscape.
Legal discourse, characterized by specialized jargon and narrative reshaping of clients' stories, reflects unique lexicons encapsulating historical and traditional societal contexts within each legal system. This semantic and cognitive blending results from the convergence of values towards practical effectiveness and the interplay between state affairs and their significance in society.
Legal categories are structured within normative statements to shape and communicate behavioral norms, reflecting a semantic social contract underpinning the obligatory force of legal provisions. However, this can pose challenges for individuals from diverse cultural backgrounds, navigating semantic mazes and concealed inequalities when confronting national law.
As emerged in this work, the cultural aspect in legal processes is often addressed ambiguously or problematically, oversimplifying identities and narratives. Interpreting conflicts through ethnic or racial lenses often sidesteps underlying socio-economic foundations, obscuring internal disparities and portraying sources of discrimination as inherent and cultural.
Consequently, broad categories oversimplify identities, constructing a distinct and resistant immigrant identity incompatible with societal norms.

Against this backdrop, what are the necessary tools for lawyers and judges to better comprehend and evaluate the cultural element in the broader legal context?
What are the pragmatic methods and strategies that judges and lawyers could employ and require to improve their comprehension and assessment of the cultural dimension within the broad legal sphere?
Besides the need and improvement for intercultural mediators and translators, already mentioned in this concluding part of the work, an essential topic that surfaced during this study is undoubtedly the significance of interdisciplinary collaboration and specific training for legal professionals.
Furthermore, some lawyers and judges mentioned the concept of a cultural information guide, described by interviewees in broad terms as a standardized resource for handling cultural diversity

and practices. Yet, when asked specifically about its structure, none of the interviewees provided clear responses or opinions.

In recent years, there have been some interesting initiatives in this direction, although they remain relatively limited.

There is a growing trend of specialized training courses for lawyers offered by local associations, with the contribution of different professionalities, and at the judicial training school. These courses specifically address criminal law and multiculturalism, with contributions from both legal professionals and academics, and social scientists.

In March 2018 and 2019, the Italian School for the Judiciary (Scuola Italiana di Magistratura) organized a three-day course titled "Multiculturalism and Criminal Law" at its venue in Scandicci-Florence. The course was attended by a hundred judges and addressed topics such as the role of the "anthropologist judge" (2018) and the practical application of the "cultural test" (2019) in theory and practice.

Moreover, in May 2017, the "Observatory on Justice, Transcultural Dialogues, and International Protection" was founded. Its aim was to formulate a protocol and guidelines for Italian judges and lawyers dealing with multicultural disputes. The Observatory functions as a voluntary organization following a model established in the 1990s by Judge Carlo Maria Verardi, who initiated the gathering of judges and lawyers to address emerging issues before they become formal legal matters.

Furthermore, one noteworthy example is a Cultural Handbook developed through a PON research project concluded in 2023, within the framework of the "Unified Project for the dissemination of the Office for the Process and the implementation of innovative operational models in the Judicial Offices for backlog reduction".

The vademecum was designed to provide judges with a practical tool for navigating multicultural disputes. This resource aims to enhance judges' understanding of cultural differences whenever culturally motivated behaviors by foreign, immigrant, or minority individuals come into focus in legal cases. The key operational feature of this handbook is the "orientative cultural test", which seeks to assist judges in addressing cultural diversity by summarizing common elements used to resolve multicultural disputes across different legal traditions. It includes specific "cultural cases" and proposes scenarios for balancing cultural rights with other constitutional rights.

Regarding my involvement in this project, I contributed directly as an external collaborator, working with both legal experts and another anthropologist. One of the significant challenges was to avoid turning the handbook into a mere compendium, and this often highlighted the different

approaches of the disciplines involved. The need for "objective" guidance risked leading to generalizations and stereotyping, which in turn could promote an essentializing perspective.
However, I consider the outcome to be quite interesting. From the outset, we emphasized the deliberate choice not to aim for exhaustiveness or universality, a point that was clearly articulated in the final research product. This work is in fact intended as an initial tool for addressing multicultural cases and should be supplemented, at the judge's discretion, with additional research and ideally with input from a cultural expert.
What I find crucial is fostering a dialogue between the social sciences and the legal field. While there is undoubtedly room for further improvement and research in this area, I see this as a fundamental step forward. Despite potential challenges, as mentioned earlier, initiating collaborative efforts can bring attention to an emerging topic within the realm of justice, complementing more theoretical research on the subject.
Moreover, I believe this project deserves credit for not solely concentrating on culturally motivated crimes within the criminal sphere. Instead, it successfully provided insightful reflections on issues pertinent to the civil arena, particularly within family law, which is unfortunately often overlooked in existing literature.

In conclusion, discussions around cultural distinctions and their relevance within legal frameworks have stimulated significant discourse among legal professionals and other stakeholders, but still scares concerning the point of view of legal professionals in the civil sphere. These issues delve into topics highly pertinent to contemporary global debates on integration, multiculturalism, and diversity management. Leveraging these ongoing dialogues, this thesis seeks to enrich both theoretical comprehension and practical perspectives at the intersection of legal practice and cultural diversity.
In family law adjudication, judges exercise differing levels of discretion in assessing, interpreting, and applying terms and concepts that are often expressed in open or indeterminate language, such as "best interests of the child" or "hardship." Additionally, established legal frameworks are being scrutinized and reevaluated, such as the very concept of marriage, for example.
As described in the introductory chapter of this study, culture emerges as a pervasive and influential factor that extends beyond immigrant individuals involved in legal proceedings. It deeply permeates the legal landscape, encompassing shared norms, values, beliefs, and practices ingrained within societies and communities. Lawyers and judges, the primary subjects of this research, inevitably operate within this culturally enriched context. Therefore, their actions and decisions, while

demonstrating varying degrees of individual discretion, are undeniably influenced by the cultural milieu in which they practice law.

As a result, individuals considered as "other," non-state entities, those with religious differences and/or belonging to minority groups, will only be deemed compatible with constitutional and human rights frameworks if their actions align with national laws, institutions, and interpretations as guided by national or regional legal precedents. Consequently, discussions and declarations concerning rights lose their potential for universalization and inclusivity, instead becoming tools used to justify the exclusion of diversity and alterity (Parolari, 2010). To mitigate this risk, it becomes imperative to educate legal professionals and all the different people involved in the justice system in the skillful practice of interculturality.

This entails moving beyond surface-level interpretations of legal institutions or practices, especially when these involve individuals from culturally, religiously, educationally, or ideologically distinct backgrounds.

We should try to rethink the concept of "identity" in terms that do not focus solely on traits like unity or permanence, but rather acknowledge the diverse and dynamic nature of individual and collective (cultural) identities. Despite appearing paradoxical, identity is increasingly seen as a dynamic "field of differences" (Geertz, 1996) that continuously evolves.

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