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Ph.D Research Proposal  
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Title of the research project:

**Cultural diversity and the law.**

**Perception and management in Italian courtroom settings**

Keywords: Legal Anthropology, Cultural Diversity and Law, Society and Law, Global Society

**Introduction**

Social scientists have much to contribute to a nuanced understanding of legal culture and how it can play out when questions of accommodating sociocultural diversity are at stake. In the contemporary context of multicultural societies, where different ethnocultural backgrounds characterize the socio-legal overview, my research will examine the question of how culture and customs are dealt in Italian courtrooms, contributing to the debate over the potential key role of the cultural expertise in the legal field.

The aim is to analyze the perception and management of cultural diversity within the Italian courts, with regards to the use of cultural experts as part of the justice system, exploring the different socio-legal approaches around cultural mediators, or the so-called cultural brokers (Holden 2011).

This will help to reconsider the importance and need to apply cultural specific knowledge to the legal sphere, in order to restore a more complex and correct use of the term “cultural” and “culture” in such a framework, to foster the crucial and innovative debate concerning the evaluation of the use and impact of cultural expertise in contemporary litigations.

## **State of the art**

The aim of the research is to investigate the perception and management of the cultural element within Italian courtrooms, in particular concerning the debate on anthropological expertise in the sphere of judicial practice.

Much of the most recent debate concerning cultural diversity and the law has mainly focused on multiculturalism and criminal law (Kymlicka, Lernestedt 2014) and the way to understand the notion of culture in legal proceedings, besides the use of anthropological knowledge in courtrooms (Holden 2019; Good 2008)

Culture is a crucial point with regards to the concept of “cultural defence”, namely “a specific doctrine that recognises the cultural background of the defendant as an excuse or mitigating circumstance in a penal case” (Van Broeck 2011). The idea that a person has acted under the influence of her/his culture means, therefore, that the specific cultural background should be taken into account. Although this doctrine has been strongly criticized (Renteln 2005), it suggests the importance of a debate concerning the notion of culture in the legal sphere. Therefore, the use of cultural expertise in the legal context constitutes a central issue, discussed by many scholars, mainly specialized within the field of law and culture in common law tradition (Holden 2011; Grillo 2017; Nader 2009; Good 2008). But while there are many researches on how to solve multicultural conflicts (Basile 2007; Ruggiu 2017; De Maglie 2010) and on the notion of cultural defence and cultural offence (Van Broeck 2011; Renteln 2005), the European debate concerning perception and assessment of cultural diversity - related to judicial practice - is still open and crucial. Within this broader European context, reflections about the current Italian situation and the role of the cultural expert within the Italian judiciary system are still scarce and are therefore going to be investigated.

## **Research Objectives**

This research project is directly related to my master thesis, which investigated the relationship between law and anthropology and Italian cases that involved a cultural expert. In light of this previous work, my research project aims to broaden the analytical field of vision, in order to evaluate the perception of the cultural element by legal experts. The objective of the project will be to investigate how the cultural element is dealt within the Italian legal context (Sacchi 2013; Pannia 2015; Ruggiu 2017), keeping into consideration

that in some cases cultural roots could be strategically employed to justify certain forms of behaviour (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 the contemporary society (Vetters, Foblets 2016) - where multicultural conflicts are more and more frequent - it is necessary to investigate how the judges react to the involvement of culture in the litigation. Italian law allows the participation in trials for socio-legal experts: the court, prosecutor and parties are permitted to involve professional experts when the issue cannot be resolved based on general notion of experience. Their participation is regulated by articles 61, 64 and 191, 201 of the Civil Procedure Code and by articles 225, 233, 359, 360, 501, 502 and 510 of the Penal Procedure Code.

Therefore, the aim is to investigate how judges perceive, assess and manage sociocultural diversity in their daily decision making. Does the legal expert consider the cultural background as relevant in certain legal cases? Does the judge contact an expert, and on what grounds? Which kinds of knowledge are considered as cultural expertise? What are the necessary tools for the judges to better comprehend and evaluate the cultural element in the broader legal context?

These are some of the questions that underlie my research objectives. The idea is of a mapping project, in order to have a clear overview of the Italian current situation, that would enable a future discussion concerning the need of rethinking of the legal expert training, thanks to the specialized knowledge of social scientists (Holden 2019; Menski 2011).

Rather than focusing on the anthropological knowledge itself, it is important to consider the idea of collaborative exchange between anthropology and, more in general, between social scientists and judicial decision-makers.

This collaboration would enable a useful and critical path to rethink these two different disciplines as much more interconnected, aiming to contribute a substantial change and a more critical perspective on the perception of the judicial decision-maker (Nader 2009; Grillo 2017). It would have the crucial benefit of going beyond the stalemate in which judicial and anthropological expertise are seen as competing and, above all, incompatible kinds of knowledge (Bourdieu 1987). Instead it would provide a common space for

exploring a critical reflection and applied problem-solving, relying on a more flexible and context-dependent notion of culture (Wikan 2007; Goodale 2005)

### **Methodology and expected results**

The project is built upon the research period for my master thesis. The Phd project will expand on the study of related literature on the topic and the fieldwork on cultural expertise in Italy, previously started during my Master degree.

Besides baseline literature, from a methodological point of view, empirical data are going to be collected from exploratory surveys, with open-ended questions, concerning different aspects of judges' experiences with cultural diversity. The questions - such as the different techniques used to address cultural diversity, the areas of law in which cultural diversity is experienced as a difficult issue or what kind of additional tools could help the judges' experience - are going to be put in an open way. In this way, the survey is expected to enable the judges to flag what they consider the most relevant or problematic issues in their daily practice, concerning the main research theme.

This tool is expected to provide both a qualitative and quantitative sampling, in order to get the point of view of a discrete number of legal experts.

The fieldwork will be held at the Corte d'Appello of Milano, Roma, Napoli and Palermo, in order to get a wide range of legal, social and migration context. The research will include both criminal law, according to certain type of crime, and civil law, including the juvenile court, according to few Institutes (Istituti) of interest (such as family law). It is assumed that a practical application of an operationalised working concept of culture could be shaped by the characteristics of legal professional culture, which therefore influence when and how cultural expertise is sought. Through the collection of data I aim to achieve a comparative analysis between criminal and civil law contexts, expecting nevertheless a general vagueness concerning expertise knowledge.

The wide spectrum of people involved to provide expertise are expected to be both translators, mediators and cultural experts, whose roles are therefore going to be investigated.

### **Description of the research in the three-year period**

**I year:** Deepening of the theoretical issues, in particular concerning the legal sphere, required to develop the research project. Introductory and background courses, teaching and research activities proposed by the University of Urbino, such as the Data Lab, to have the chance to work on data bases. Improvement of my research methods, both qualitative and quantitative, in order to better organize the research plan. Participation in the Seminars held at the University and definition of the structure and contents of the research project. resumption of contacts established during the master thesis project.

**II year:** Developing of the theoretical and practical approach of the research. Design and conduct of a possible exploratory survey concerning the involvement of the cultural element in the judicial decision-making. Collecting of empirical data through fieldwork, aimed to assess judges' experiences with cultural diversity in the courts. Research abroad agreed upon with the supervisor and the Ph.D Director, attendance of the courses, seminars and workshops proposed by the University.

**III year:** Analysis of the empirical data collected and completion of the Ph.D thesis. Presentation of papers at international workshop, writing and publication of research works.

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