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The transformation of televised judicial authority in the past twenty years: A Lithuanian experience

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THE TRANSFORMATION OF TELEVISED JUDICIAL AUTHORITY IN THE PAST TWENTY YEARS: A LITHUANIAN EXPERIENCE

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ABSTRACT

This research examines the transformation of judicial authority in Lithuania over the past twenty years. While mainstream interest in the role of the judiciary in changing conditions is growing, only a few studies are challenging the prevalent ignorance about the law's reactions and responses to the challenges in transitioning democracies. This study fills a gap in knowledge about the role of culture in legal transformations in transitioning democracies by answering the question of whether the newly developing concept of judicial authority in Lithuania is influenced or affected by media and television judging programmes.

In response to the call to explore the cultural formation of law (Sharp, Leiboff, 2015), this research builds on the methodological framework of adapted ethnography (Sharp, 2015) and draws on postcolonial studies and theatrical jurisprudence (Leiboff, 2019) in the analysis. As a method of doing cultural legal studies, the research design enabled the contextually embedded interrogation of the informants' responses and reactions to a montage of two Lithuanian programmes, *Court* and *Culture Court*, and subsequent interviews or focus group discussions. The analysis draws on two focus group discussions and eight individual interviews with 17 judges of the first instance courts and two television creators, all situated in Lithuania.

The analysis of the referential realm draws attention to the challenges of the ideal of a dispassionate judge in the Lithuanian context. As a sense of justice developed within the legal consciousness, the importance of and obstacles to critical reflection were revealed in the analysis of the critical realm.

Based on participants' responses, a combination of theatrical and Soviet postcolonial perspectives focusing on the role of culture in rethinking judicial roles helped uncover the main challenges posed by tensions between political allegiance and the rule of law, along with issues such as privacy, trust, judicial image, and impartiality. These challenges highlight the need to address the development of a sense of justice in legal consciousness through critical reflection on Lithuanian cultural heritage. The thesis reveals how bodily responsiveness does not preclude the formation of caring judicial authority, whereas law's violence is largely attributed to the denial of the body in a democracy in flux.

This thesis, therefore, provides a unique lens for critical reflection on the legal consciousness of the legal profession in a democracy in flux. This new perspective allows a better understanding of how legal consciousness is shaped by history and culture, as well as how these factors shape the law and its application in a rapidly changing world. By interrogating the effects of popular culture on the newly emerging concept of judicial authority in post-Soviet society, this study opens up a new area for research.

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CERTIFICATION

I, Aiste Janusiene, declare that this thesis, submitted in fulfilment of the requirements for the conferral of the degree of Doctor of Philosophy from the University of Wollongong, is wholly my own work unless otherwise referenced or acknowledged. This document has not been submitted for qualifications at any other academic institution.

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Aiste Janusiene

13th March 2023

LIST OF NAMES OR ABBREVIATIONS

ST - Simultaneous talk, appear in italics in the quotations of the interviews and focus group discussions.

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DETAILS OF PRIOR PUBLICATIONS

Prior published material is included in this thesis as follows:

Chapters 1, 2, 4 and 6 - Janusiene, Aiste, '"Do You Understand How Much I Have Transgressed Here?": Interrogating Dynamics and Consequences of Noticing in the Post-Colonial Legal Self' (2021) 25 *Law Text Culture*

Chapters 1, 2, 5 and 7 – Janusiene, Aiste, 'Judicial authority through the experiences of crisis' (2022) 13(1) *Jindal Global Law Review*

CHAPTER 1

INTRODUCTION

This thesis adopts a cultural legal studies approach to explore the role of the popular culture in the development of judicial authority in the Lithuanian context. To explore such a transformation, this chapter will provide the theoretical context for the analysis undertaken.

A *Research Purpose and Context*

1 *Background of the Study and the Lithuanian Context*

In Western thought since the turn of the 20th century, technocratic and emotional influences continue to challenge positivist legality shaped by the assumptions of the Age of Enlightenment (Laster and O'Malley 1996: 24). In the context of a judicial institution, this is seen, for example, in a shifting scholarly focus from abstract norms to the conduct and experiences of judges.[1] However, this literature on the judicial role is largely focused on common law or the Western European civil law experience of judging. What has been less considered is the Baltic experience, nation states that had previously been subject to the formalities of Soviet legality as a mode of positivism, and the move to a different legality grounded in the ethos of Western European legalities. Lithuania provides rich ground to explore changes in positivist legality because of the historical entanglement of different legal cultures, particularly when using the field of theatrical jurisprudence to rethink the practices of judging. After half a century of Soviet rule, thirty years since the

[1] See, for example, Judge Gaakeer's (2018) reflections on the judicial role, or Moran's (2020; 2021) work on the judiciary.

end of the totalitarian regime and seventeen years of European Union (EU) membership, Lithuania's ongoing negotiation of historical reality could be seen in the European Court of Human Rights' recognition of Soviet repressions against Lithuanian post-war resistance as genocide, as well as from the judicial corruption scandal involving a part of the Lithuanian judiciary that made international headlines in 2019.[2]

In transition from Soviet legality, major changes are taking place. For example, Lithuanian scholars recognise the complexity[3] and contextual nature of a concept of law and admit that multiple concepts do not contradict but complement each other.[4] Lithuanian law has been recognised as a cultural practice operating among other discourses.[5] Professor Vaišvila's (2002) concept of law as cultural process is taken further by stepping outside of traditional legal boundaries and looking into complex interactions between law and life. Baublys (2006) observed a changing conception of justice and noted that today's historically knotted idea of justice that forms the basis of legal state is trivial and its application requires balancing interests by including the whole catalogue of human

[2] See Reuters, *Lithuania arrests eight top judges in anti-corruption crackdown* (21 February 2019) <https://www.reuters.com/article/us-lithuania-corruption-idUSKCN1Q922O>. Also see Julija Kiršienė and Edita Gruodytė, 'The highest rate of public trust in judiciary in twenty years in Lithuania: trend or coincidence' (2019) 1 *International and Comparative Law Review* 125-145. Aistė Valiauskaitė and Aina Mizgirdė, Week, *Decade of Court Reforms Unable to Eradicate Lasting Corruption* (24 February 2019) <https://www.lrt.lt/naujienos/lietuvoje/2/246981/desimtmetis-teismu-sistemos-pokyciu-nesugebejo-sunaikinti-isisenejusios-korupcijos>; Aiste Janusiene, 'Judicial authority through the experiences of crisis' (2022) 13(1) *Jindal Global Law Review* 69-86.

[3] Egidijus Kūris, *Hartas ir mes // Hart H. L. A. Teisės samprata* [Hart and us // Hart H. L. A. Concept of Law] (Pradai, 1997); Jevgenij Machovenko, 'Lietuvos viešosios teisės iki XVIII a. pabaigos istorijos tyrimų būklė ir perspektyvos' (2011) 79 *Teise [Law]* (Lithuanian, Summary in English) 25. All translations are by the author, except where otherwise indicated.

[4] Kęstutis Jankauskas, 'The Role of the Principles of Law in the Legal Process and Peculiarities of Their Effect on Relations Regulated' (2004) 59(51) *Jurisprudencija* [Jurisprudence] 140.

[5] See, for example, Alfonsas Vaišvila, *Teisinis Personalizmas: Teorija Ir Metodas* (Justitia, 2010); Vytautas Šlapkauskas, 'Teisės Socialinio Veiksmingumo Sampratos Tyrimas' (2002) 13(1) *Filosofija. Sociologija* [Philosophy. Sociology].

rights into the concept of social justice.[6] Rainienė (2015) argues that 'Lithuanian law does not have an authority … The main reason is lack of morals in law. Therefore the solution is to return moral shape to law'.[7] This argument will be addressed by my analysis in this thesis.

Despite the fact that Lithuanian constitutional doctrine[8] and some scholars[9] put an emphasis on law's content rather than its letter, judicial authority is characterised as conservative (Brazdeikis, 2016). A more cautious approach towards judicial activism in the debates on the judicial empowerment was observed by Berkmanas (2009),[10] while persistence of 'the Soviet lawyer's mentality and culture'[11] was suggested in the study of the role of ethics by Kelley and Kiršienė (2015). However, the lack of research on the historical development of courts,[12] that forms another significant area of recent Lithuanian legal research on the judiciary, has been indicated by Maksimaitis (2017).

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[6] Linas Baublys, 'Aristotle's Distinction of Justice in Modern Legal Discourse' (2006) 8 *Jurisprudencija/ Jurisprudence* 87(Lithuanian, Summary in English).

[7] Vida Rainienė, Formalistinio požiūrio nepakankamumo aiškinant ir taikant teisę priežastys [Reasons of formalistic approach insufficiency for law interpretation and application] (2015) *13 Visuomenės saugumas ir viešoji tvarka [Public Security and Public Order]*150.

[8] *Official Constitutional Doctrine 2014-2016* (Lithuania) [Lietuvos Respublikos Konstitucinis Teismas [Lithuanian Constitutional Court], 2017) 286-311].

[9] See, for example, Baublys, above n 6.

[10] See, for example, Oleg Fedosiuk, 'Neformalus baudžiamojo įstatymo taikymas: poreikis, ribos, doktrinos [Informal Application of Criminal Law: Demand, Limits, Doctrines] (2014) 21(4) *Jurisprudencija/Jurisprudence* 109–110 (Lithuanian, Summary in English); Raimundas Jurka, Egidijus Losis, Vytautas Sirvydis, 'Apdairaus teisingumo beieškant: apeliacijos ribų ir teismo laisvės santykis' [The Search for Cautious Justice: Relationship Between the Limits of Appeals and the Freedom of Court Activity] (2016) 23(2) *Jurisprudencija/Jurisprudence* 162-178 (Lithuanian, Summary in English); Ignas Vėgėlė, Laura Kazakevičiūtė, 'Teismo precedentas Lietuvos teisės sistemoje: 11 metų patirtis ir siūlomo tarėjų instituto iššūkiai' [Precedent in the Legal System of Lithuania: 11 Years of Experience and the Proposed Reform to Introduce Lay Judges] (2017) 24(2) *Jurisprudencija/ Jurisprudence* 256–270 (Lithuanian, Summary in English).

[11] Christopher R Kelley, and Julija Kiršienė, 'The Role of Ethics in Legal Education of Post-Soviet Countries' (2015) 1(8) *Baltic Journal of Law & Politics* 146.

[12] Mindaugas Maksimaitis, 'Lietuvos 1933 m. teismų reformos rengimas' [The Preparation Of The 1933 Judiciary Reform In Lithuania] (2017) 24(2) *Jurisprudencija/Jurisprudence* 237 (Lithuanian, Summary in English). For the comprehensive overview of this field of Lithuanian judicial research see Mindaugas Maksimaitis, 'Teismų santvarkos pagrindų formavimasis Lietuvoje (1918–1933)' [Formation of the

In the backdrop of rising regionalism, Kalnačs (2016) problematised the search of identity by observing the irony of the Baltic 'colonial present' – 'situated in the sphere of tension between major powers, ... Baltic societies still find themselves in a place – both physically and mentally – between "civilizations"'.[13] An example of such tensions in a legal context could be Cserne's (2020) reconstruction of two competing narratives[14] that shape the discourse on the Central and Eastern Europe's formalistic judicial approach. He suggests that the resurfacing ideological patterns that inform handling of contemporary challenges and collective (political) identities, have a broader application to 'professional discourses and seemingly unpolitical domains'.[15] According to Uzelac (2010), despite the collapse of the Soviet Union, the Socialist Legal Tradition survived thanks to the adaptability and ideological neutrality of the underpinning principle of 'the instrumentalist approach to law',[16] while Manko (2013) considers a 'high level of purely procedural formalism'[17] as one of its features.

Judiciary Fundamental in Lithuania (1913–1933)] (2013) 20(2) *Jurisprudencija/Jurisprudence* 375–390 (Lithuanian, Summary in English).

[13] Benedikts Kalnačs, *20th Century Baltic Drama: Postcolonial Narratives, Decolonial Options* (Aisthesis Verlag, 2016) 32.

[14] Cserne (2020) outlines them as such: 'One can associate the first narrative with concepts such as modernization, reform, progress, Enlightenment, and supra-national integration, and the second with tradition, conservatism, Sonderweg, national identity and self-sufficiency.' Péter Cserne, 'Discourses on Judicial Formalism in Central and Eastern Europe: Symptom of an Inferiority Complex?' (2020) 28/6 *European Review* 888.

[15] Ibid.

[16] Alan Uzelac, 'Survival of the third legal tradition?' (2010) 49 *Supreme Court Law Review* 379. In line with this theoratisation, judicial independence as a symptomatic problem featured in several accounts. Concerns with independence were expressed by several participants and are further discussed in the analysis chapters.

[17] Rafal Manko, 'Survival of the Socialist Legal Tradition? A Polish Perspective' (2013) 4 *Comparative Law Review* 6. These studies concern Polish judiciary, but some Lithuanian studies also start theorising the ways of the survival of the Soviet consciousness in post-Soviet society, as well as legal tradition. See for example, William D Meyer, 'Facing the Post-Communist Reality: Lawyers in Private Practice in Central and Eastern Europe and the Republics of the Former Soviet Union' (1994) 26 *Law and Policy in International Business* 1046; cited in Christopher R Kelley, and Julija Kirsiene, 'The Role of ethics in legal education of Post-Soviet countries' (2015) 1(8) *Baltic Journal of Law & Politics* 143.

Besides Soviet legacy, other challenges shape the context of judging in Lithuanian. For example, Bencze (2022) who is concerned with a rising populism in the region, coined a notion of 'everyday judicial populism'.[18] He emphasises the difference between judicial populist styles as a direct response to public attitudes as opposed to the consideration of 'social needs and the requirements of the Zeitgeist'[19] in pragmatist adjudication. Indeed, the tension between an increasing visibility of courts and a decreasing public trust frame a changing judicial role in Lithuania.

Perceptions of the judicial image constitute an active research field in Lithuania, and from the debates about judicial image emerges a problem of judicial authority. For example, the discrepancy between the self-perception of judges and public attitudes is a matter of concern, problematised in a recent study (Valickas et al, 2015) due to its potential to cause distrust in courts. Other research (Valickas, Vanagaitė, 2017) identified the rearrangement of public attitudes towards the lower and higher courts concluding that higher courts are perceived as more compliant with procedural rules. In turn, judicial perceptions about 'the image (or its separate components) of public prosecutors and prosecutorial offices'[20], were explored qualitatively in Valickas and Jarutienė's (2022) study.

Alongside explorations of perceptions informing the relationship between the courts and the public, connections between media and distrust of institutions are another concern in the research on the judiciary in Lithuania. For example, a comprehensive Lithuanian

[18] Mátyás Bencze, 'Everyday Judicial Populism' in Hungary' (2022) 47(1) *Review of Central and East European Law* 37-59.
[19] Ibid.
[20] Gintautas Valickas and Kristina Vanagaitė, 'Lietuvos prokurorų ir prokuratūrų įvaizdis' [Image of the Lithuanian prosecutors and the institution of prosecution] (2022) 122 *Teisė* [Law] 104-124. In this article, an overview of the legal profession's image studies in Lithuania can be found.

study suggested that knowledge about courts come more often from the media than from an actual appearance in courts, and the media plays an important role in the public perceptions of the judiciary (Čunichina et al, 2018). A media coverage of 'a so called paedophilia scandal'[21] as a challenge to judicial authority and trust in court decisions was suggested by Valickas and Jarutienė research (2014). By comparing the development of the coverage of the scandal on the most popular means of Lithuanian mass media from 2009 to 2012, this study argues that the contrasting portraits of a criminal 'mob of judges', and the truth-seeking judge who is fighting this 'mob', emerged.[22] While also acknowledging an active role of media in reflecting and proliferating this conflict, Mažylis et al (2013) pointed to a long-term divergence between 'a protest society eager to combat paedophilia and the system ostensibly protecting it'[23] in his exploration of the formal establishment of the Lithuanian political party *Drasos kelias* [Road of Courage]. This study also called for the interdisciplinary exploration of the construction of discursive institutionalism.

A growing interest in the exploration of perceptions of courts' performance that is observed by Lithuanian scholars[24] could be attributed to several factors. Firstly, public trust in courts plays a vital role in the *Lithuanian Courts' Communication Strategy* for

[21] Gintautas Valickas, Liubovė Jarutienė, 'Pedofilijos skandalo metu informaciniame žinių portale *Delfi* ir dienraštyje *Lietuvos rytas* pateikto teisėjų įvaizdžio ypatumai' [Special features of the image of judges presented in informational portal *Delfi* and daily paper *Lietuvos Rytas* during paedophilia scandal] (2014) 92 *Teise* [Law] (Lithuanian, Summary in English) 33. This highly resonant criminal investigation received active involvement of Lithuanian public and politicians, also got international response <https://www.csce.gov/international-impact/events/politically-motivated-injustice>

[22] Ibid 31.

[23] For the interdisciplinary analysis of the establishment of this party see Liudas Mažylis, Ingrida Unikaitė-Jakuntavičienė, and Bernaras Ivanovas, 'The Rise in popularity of the Lithuanian political party "Drasos kelias"' (2013) 1(6) *Baltic Journal of Law & Politics* 84-85.

[24] Gintautas Valickas, Kristina Vanagaitė, 'Teismo posėdžio dalyvių teisėsaugos institucijų ir pareigūnų elgesio vertinimai: 2012 ir 2015 metų tyrimų duomenys' [Trial participants' assessment of law enforcement institutions and officers' behaviour: the data of 2012 and 2015year studies] 2017 (102) *Teise [Law]* [author's trans] *31* (Lithuanian, Summary in English).

2017–2020, which aims to increase public confidence in courts by 15 per cent in the four year period.[25] In addition, the dissemination of judicial images in the media,[26] and directly from courtrooms[27] facilitates, more than ever, various interactions with judicial authority that affect legal consciousness.

Moreover, legal consciousness cannot be reformed so fast. Currently, changes in media operation and developments of political communication in the public space are influenced by the widespread (Western) media development trends (Nevinskaitė, 2016). Examining the effectiveness of a well-prepared visual propaganda in Lithuania, Grigoravičienė (2011) attacked the reduction of visual presentations in news reporting to stock images. She argues that this image operates as a metaphor to represent an actual visual material instead of presenting it. Therefore, characterising Lithuanian media as iconoclastic, she also notes the tendency of media creators to feed, and consumers to accept, the simplified content of the news.[28] Juraitė and Balčytienė (2022) argue that while Lithuanian journalism is becoming more institutionalised and professionalised, the media is hardly ever driven by democracy and public welfare. Therefore, they emphasise '[m]edia and information literacy based on democratic values of participation and critical thinking … to increase public resilience and critical mindset against harmful content; improve media quality, and promote professional journalism, and democratic culture'.[29]

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[25] *Resolution on Courts communication strategy and its implementation (Lithuania)* The Judicial Council, 27 January 2017, 13P-14-(7.1.2) 5 (Lithuanian).

[26] See, for example, Kiršienė, and Gruodytė, 2019, above n 2, Valickas, Jarutienė, above n 21.

[27] *Law on Courts 1994* (Lithuania) No I-480.

[28] Erika Grigoravičienė, *Vaizdinis posūkis: vaizdai, žodžiai, kūnai, žvilgsniai* [Visual Turn: Images-Words-Bodies-Glances] (Lietuvos kultūros tyrimų institutas [Lithuanian Culture Research Institute] 2011) 10.

[29] Kristina Juraitė and Auksė Balčytienė, 'Accelerating News Media Use and MIL Environment Amidst COVID-19 in Estonia, Latvia, and Lithuania' in Yonty Friesem, et al (eds), *The Routledge Handbook of Media Education Futures Post-Pandemic* (Taylor & Francis Group, 2022) 417.

In the context of the crisis of Lithuanian judicial legitimacy framed through the corruption scandal, Lithuanian scholars problematised a lack of ethical training for the legal profession (Kiršienė, and Gruodytė, 2019). Another study evaluating ethical training of Lithuanian legal professionals observed a space for improvement (Kiršienė, and Gruodytė, 2019) as well as calling for less traditional approaches to teaching legal ethics (Kelley, Kiršienė, 2015). Max Weber's *ideal type* was used to rethink the ideal of a judge (Navickienė and Žiemelis 2015), while acknowledging the importance of practical ethics in judicial work (Navickienė, 2018). Another Lithuanian study (Mauricė-Mackuvienė, 2014) observed the balancing character of actual and ideal judicial performance, but this time in the higher courts.

Alongside practical ethics, legal decision-making is also a concern of Lithuanian scholars. For example, as suggested by an empirical study about information processing in judicial decision-making in criminal (robbery) cases, 'intuitive group decided on higher sentences (i.e. was closer to an anchor), compared to rational group.'[30] Based on the analysis of the present regulation of criminal procedure, Žibaitė-Neliubšienė (2019) argues that due to an inquisitorial nature and an active role of a judge in a criminal procedure in Lithuania, increasing embeddedness in the demands of the milieu ensures an effective judicial impartiality.

How judges react to and respond to the challenges of law in this state of flux has not been considered in this nascent rethinking of the judicial role in Lithuania. It is clear that there is only so much that formal explanations of law and judging can do to help judges

[30] Tomas Maceina, Gintautas Valickas, 'Judicial Decision Making: Intuitive and Rational Information Processing' (2019) 110 *Teise* [Law] 79. In this study, by heuristic anchor is meant a quantitative evaluation based on the initial pre-determined assessment either self-set or proposed by others.

negotiate and traverse these challenges. Moreover, the role of visual culture in shaping the judiciary's functioning remains less understood. In the Lithuanian context, this becomes particularly relevant due to the convergence of distinct legal cultures and the challenges of reconciling historical legacies with contemporary legal practices.

Next, the brief reflection on the concepts of legal culture and judicial authority serves to set the context for the research question and frame the critical issues informing this study. In this thesis, I will delve into the entanglements of societal and cultural influences that trans(form) understanding of judicial authority. Therefore, here concept of legal culture goes beyond analysing legal doctrines to interrogating the realm of cultural dynamics, and unmasking the hidden emotions, desires, and conflicts embedded within the law itself (Sherwin, 1996; Sharp, 2015). This notion challenges the assumption that legal frameworks are universally fixed and objective, instead revealing the constructed nature of these frameworks as products of specific cultural contexts. In the realm of legal scholarship, particularly in the Western context, the prevailing focus has been on the judicial role within common law or Western European civil law systems. However, Lithuania presents a captivating backdrop to explore changes in legal culture, given its historical entanglement of diverse legal traditions.

As will be thoroughly explained in Chapters 2 and 3, visual storytelling offers potent means to explore the shifting shapes of law within a specific cultural context. Cultural legal scholars (Sharp, Leiboff 2015) have shown that images, narratives, and symbols within legal discourse are not mere embellishments but integral to the formation of cultural conceptions of law. This approach brings to the fore the dynamic interplay between law and popular culture, acknowledging their mutual influence.

By interrogating the complex formation of judicial authority in Lithuania and its dynamic interplay with cultural context (Sharp, Leiboff, 2015), this study will highlight the need for a nuanced understanding of judging practice and the challenges of everyday adjudication.

In Western tradition, hearing and determining legal disputes according to law is a domain of judicial authority, while authority itself is defined '[a] right to exercise power, based on a claim to legitimacy, particularly by a branch of government.'[31] Long standing norm for this practice was textual interpretation of the statutes but the contemporary legal landscape witnesses meaningful shift to a context-inclusive interpretation of statutes to address social needs. Also, growing significance of visual imagery in enhancing the credibility of the judiciary is recognised (Moran, 2020; Goodrich, 2021).

This resonates with increasing reliance on public image to enhance the legitimacy of the Lithuanian judiciary. As discussed at the outset of this chapter, due to dynamic legal changes, the understanding of judicial authority has undergone even more abrupt transformations. This shift is characterised by a departure from prior Soviet legality and a move towards the embodiment of Weberian charismatic professionalism (Navickienė, Žiemelis, 2015). Rethinking the role of the judiciary with an increasing focus on visibility and public trust brings to the fore tensions between populist judicial styles, aligning with public sentiments, and pragmatic adjudication, which strives to address societal needs and the spirit of the times (Bencze, 2022).

Clearly, contemporary application of law necessitates an adaptive approach by judges, constructing a responsive and case-specific jurisprudence. This perspective, however,

[31] Trischa Mann, *Australian Law Dictionary 3e* (Oxford University Press, 2017) 81.

demands further investigation into how judges navigate legal challenges while being mindful of the changing legal landscape. Therefore, emphasising the importance of understanding judicial authority in transformation sheds light not only on specific challenges and nuances present in the Lithuanian legal context, but also on the constructed nature of our assumptions about legal interpretation and the role of the judiciary more broadly.

Building on this understanding that extends beyond the formal explanation of the concepts of judicial authority and legal culture, in this thesis I will explore an alternative by revealing how the contextual awareness of the body (trans)forms an understanding of the judicial role, and conversely, the consequences that flow from a negation of the judge as a responding body.

To do this, I use data generated in focus group discussions and interviews conducted in 2019 with Lithuanian judges and creators of a historic Lithuanian television judge show. I draw on cultural legal studies methodology (Sharp, 2015), underpinned by active audience and legal consciousness theories, and theatrical jurisprudence as a critical practice, to explore the conditions of noticing through reflective analysis of an emerging awareness in the postcolonial legal self. Theatrical jurisprudence provides invaluable tools to interrogate the shift of legal self from dogma to embodied practice of law 'because theatre takes us back to our bodies and how they attenuate law' (Leiboff 2019: 31).

Theatrical jurisprudence, as performed through these judges, reveals complex negotiations of legal positivism and the disembodied ideal of a judge, as well as a shift towards the practice of performance in the theatrical jurisprudence sense. Positioning this transition from dogma to practice on the tension between the fiction and reality provides

in-depth insights on the development of noticing the legal self, and what this means for judges in Lithuania.

2 *Research Question and Aims*

This thesis seeks to explore the transformations of judicial authority through reality judging and its role in the developing concept of judicial authority in Lithuania. The research seeks to answer the following question:

Is the newly developing concept of judicial authority in Lithuania influenced or affected by media and television judging programmes?

In order to answer the research question, this thesis has three aims:

1) To investigate and compare how fictional judicial authority has been produced in two Lithuanian court shows in the past twenty years.
2) To explore how the judiciary makes meaning of the fictional judicial authority in these shows.
3) To consider the role of reality judging in the (trans)formation of the concept of judicial authority in Lithuania.

The thesis draws on data generated through visual analysis of fictional television court programmes *Court*[32] and *Culture Court,*[33] as well as individual interviews and focus group discussions to explore ways the judicial authority is understood and transformed.

[32] *Teismas [Court]* (Just.tv, 2001-2004).
[33] *Kultūros teismas [Culture Court]* (Pradas, 2017-2018).

3 *Overview of the Methodology*

Recent scholarship clearly indicates that the cultural legal studies approach provides a fertile ground for in-depth explorations and new insights about legal phenomena.[34] By employing the methodological framework of adapted ethnography (Sharp, 2015), this research provides an opportunity to expand ethnographic modes of research within cultural legal studies. Therefore, the qualitative study of Lithuanian cultural formations of judicial authority through an active meaning-making process reveals a potential contribution to the study of the operation of the legal consciousness. To explore the role of reality judging in the development of the concept of judicial authority in Lithuania, this study will look 'beyond traditional legal narratives'[35] and focus on reactions and responses of media creators and Lithuanian judges to the images of judicial authority in Lithuanian fictional *Court* and *Culture Court* programmes. In order to access the processes of the meaning making through popular culture, this study will employ the methods of individual interviews and focus group discussions.

(a) The Shows

In this section, I describe the clips demonstrated at the beginning of both focus group discussions and all individual interviews with judges. In this thesis I will show both *Court* and *Culture Court* as agents of popular culture that participate in the (trans)formation of legal expectations about the role of a judge.

[34] Marett Leiboff and Cassandra Sharp, 'Cultural legal studies and law's popular cultures' in Cassandra Sharp and Marett Leiboff (eds), *Cultural Legal Studies: Law's Popular Cultures and the Metamorphosis of Law* (Taylor & Francis Group, 2015) 22.

[35] Cassandra E Sharp, 'Let's See How Far We've Come: The Role of Empirical Methodology in Exploring Television Audiences' in Peter Robson & Jessica Silbey (eds), *Law and Justice on the Small Screen* (Hart publishing, 2012) 114.

(i) Storytelling in Court and Culture Court

Court and *Culture Court* share an interest in clear-cut justice as they effortlessly separate right from wrong; however, they create different narratives through their approaches to the authority behind the decision. That is, *Court* relies on moral authority exposed using implicit language of law, whereas *Culture Court* explicitly defends a decision using doctrinal legal authority.

This is evidenced in the decisions provided to the participants from each show. The *Court* excerpt was from the 28 February 2003 episode:

> So, my decision is as follows. Considering that you plaintiff, have partially waived your claim for chickens; also you have not proved that these actions have been performed by the defendant's dog; moreover, you have not presented neither direct nor circumstantial evidence about the damaged and unrepaired car. Therefore, I dismiss your claim and I order to take advice from the defendant and put a high fence and to guard your property better.[36]

In this excerpt, *Court's* TV judge does not cite legal norms, yet she uses legal terms such as the plaintiff, claim and evidence. Therefore, here the source of law is implied but not directly stated, unlike in *Culture Court* as I will show next.

Below is a verdict announced in the 9 March 2018 episode of *Culture Court* that judges watched as part of the focus groups and interviews:

> Thank you, Honoured Jurors, for your opinion. Today we have a twofold situation. An issue regarding the newest work 'Criminal Odyssey of the Cucumiform' by the honourable journalist and the facts depicted in it, real facts, has been previously brought to the court and a ruling already issued. The character should have been acquitted of all the charges

[36] 28/2/2003 episode of *Court*.

> against him under the article 39 of the Criminal Code of the Republic of Lithuania. However, this is a court procedure in this studio, and *I wish* to slightly twist the verdict. Taking into account some contempt of the court that we faced in the studio, also a total absence of repentance, as well as what has been proven by the prosecutor that the accused Vytas has shown no remorse and nothing ensures that after leaving this studio he will not return to the previous activities of the gang. Therefore, *my decision would be* as follows: to concur with the prosecutor and to apply the article 59.2.1 of the Criminal Code of the Republic of Lithuania that it was a mitigating circumstance as it helped to solve the crimes committed by the organised group of criminals. *I would like* to conclude by saying: let us not chase and succumb to the allure of quick money. There is a good expression that 'Almighty gives with one hand and takes away with the other.' Hence, it is better to earn an honest penny and to sleep tightly. I will see you the next time when solving the problem that is no less important.[37]
>
> (Emphasis added)

In this extract, *Culture Court's* TV judge's use of the personal pronoun 'I' in combination with the interpretation and application of legislation could be seen as the embodiment of doctrinal authority – one of the pillars of 19th century legal theory and the basis of contemporary jurisprudence.

(ii) Storytelling Spaces in Court and Culture Court

Besides portraying different sources of legitimate authority, another difference is staging technologies in *Court* and *Culture Court*.

Court's space, light and sound (or rather its absence) create an atmosphere for performance of authority that manifests through the symbolic attributes of the institution.

[37] 9/3/2018 episode of *Culture Court*.

The judging in *Court* strongly resonates with American *Judge Judy*[38] both in appearance and in attitudes. A brightly lit television courtroom in the studio is arranged in a manner that one could expect from an American movie trial. That is, a judge's position is on a ceremonial chair behind a huge mahogany table equipped with a gavel. The case parties, witnesses and the studio audience are in full view for a judge. There is no soundtrack or cheering audience in this courtroom.

Successful dramatisation of a court trial encompasses intertwinement of symbols, bodies and process that shape a judge who is not to be joked with. At the beginning of each episode, a uniformed police officer introduces cases to television and studio audiences, then calls everyone to rise for the judge. The judge then performs a dramatic entrance, not only at the beginning but also for the announcement of the decision, emerging through a ceremonial tall double hinged door. A uniformed police officer welcomes her into the courtroom with the anticipating audience. In this context the *Court*'*s* judge appears profoundly serious about the delivery of justice.

In contrast, *Culture Court's* atmosphere is completely different in terms of organisation of space, light, and sound. This programme portrays an overtly fictional court procedure. Compared to *Court*, the studio's striking darkness is interrupted only by a few deep coloured circles created by studio-style lamps. Their light is dominantly red, but it transforms into purple when there is a need to mark the beginning and the end of a process. These projected lights circle participants positioned against the dark background, making people appear small. In contrast to *Court*, there are no gowns, gavels or other distinct court symbols. Tables and chairs are the same for all the parties, no exceptions. The

[38] *Judge Judy* (Paramount, 1996–2021).

bodies of the participants are well-lit in the darkness, and this further builds on setting the scene of selective illumination in a vast darkness. Blackness erases boundaries of the studio, there are no doors, no windows, and no audience. Music acts as a filler of this dark endless space.

In the absence of typical court symbols and costumes, *Culture Court's* courtroom atmosphere is enacted through the regulation of the show according to the court procedure rules. In line with Lithuanian procedural codes, each participant plays a given legal role. The unmistakable form of a trial is clearly instituted at the beginning of the Culture Court through the introduction of the participants and the case matter. The presiding host, a law professor, is introduced as 'a judge' in subtitles, and her role includes asking questions and proclaiming the decision, in a short, moderated conversation. There is no dramatic entrance of a judge in this show; she is constantly present during a televisual trial. After the introductory graphics, the judge is shown already seated along with other participants of that trial. Gestures, postures, and facial expressions nonverbally reflect emotions and feelings in the trial, but no physical movement happens throughout the show. However, the final part is what clearly positions *Culture Court* in the television courtroom genre. The presenter is the sole focus of the camera, allowing for fixed eye contact with the viewer. Expressive voice and facial movements are the only dramatising features accompanying intricate legal language explaining the resolution of a dispute carried by this judge. This clearly indicates conduct of judicial authority.

(iii) Production and Reception of Court and Culture Court

Finally, these shows differ in terms of production and reception by the audiences. Even though *Court* was produced and broadcasted in the second decade of democracy, and

Culture Court twenty years later, both programmes received criticism that implicated them in manipulative practices.

Court fits the genre described as courtroom television shows and it closely resembles US popular television show *Judge Judy*. The production company manufactured this show exactly a decade after the restoration of democracy in Lithuania, from 2001 until 2004. It was broadcasted on a commercial television network. This show was unique in the sense that it was at odds with both televisual and legal spheres in the context shaped by the lack of resources (both financial and know-how) of making popular production after fifty years of isolation from Western liberal democracies. As a new format of entertainment, *Court* stood out from other programmes broadcasted at that time on Lithuanian television.

Produced from 2017 to 2018, almost fifteen years later than *Court*, *Culture Court* falls into the hybrid genre incorporating features of a talk show and courtroom procedure. In our email communication,[39] the presenter of *Culture Court* informed me that before this programme commenced there had been the project of educational literary trials, started in 2016 in cooperation between VAGA Publishers Ltd, Mykolas Romeris University, and Prosecutor General's Office of Lithuania.[40] *Culture Court* was not planned but 'during one [Literary Trials] event an attending producer offered to transfer this project to television, to expand the topics beyond literary works by including films, cultural issues, and to approach them from legal perspective'.[41] *Culture Court* was broadcasted on the

[39] Email communication with the presenter of *Culture Court* law professor Snieguolė Matulienė 19/03/2018.
[40] An invitation to *Literary Court* published on Prosecutor General's Office website (in Lithuanian only) <https://www.prokuraturos.lt/lt/naujienos/renginiai-ir-kiti-ivykiai/literaturinis-teismas/4962>
[41] Email communication with the presenter of Culture Court law professor Snieguolė Matulienė 19/03/2018.

national broadcaster, and as claimed by the presenter of *Culture Court* their motivation was public education.[42]

Reception of *Court* and *Culture Court* differ, though they both received critique from the public. Although it enjoyed great ratings and popularity, *Court* was accused of manipulation by the critical journalistic inquiries of the cultural impact of this show on society at the time. For example, a critical article intertwined themes of desire for television fame, and humiliation of exposure, in their response to *Court* and expressed concerns with immorality, secrecy, reality claims and encouragement of aggression.[43] Also, two artists turned their participation in *Court* into a performance:[44]

> Playing by the rules of the program, they went along with litigation about creative theft and a piece of animal cadaver, argued, scolded each other, almost got into a fight. Later the recording of this episode was used as a performative art or a project within a context of another project.[45]

This form of reception seeking to reveal a farce of *Court* performance speaks about the resistance to the consumer culture in the transitional period from a command to a market economy.

In turn, journalist Čičelis (2017) compared *Culture Court's* form to the 'literary trials that were popular during Soviet times',[46] and argued that although meanings in the show were

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[42] Ibid.

[43] Rasa Šošič, "Teisme" draugės save ir kitus šmeižė už pinigus [Friends defamed themselves and others for money at *Court*] Sekunde.lt <https://sekunde.lt/leidinys/sekunde/teisme-drauges-save-ir-kitus-smeize-uz-pinigus/> (Lithuanian only)

[44] The video is available on YouTube (in Lithuanian, English Subtitles)
Part1<https://www.youtube.com/watch?v=orIWj_q7Nsg>,
Part 2 <https://www.youtube.com/watch?v=Gq7EMHZZ0ZQ>.

[45] Kęstutis Šapoka, „Estetiškumas" ir „Socialumas" šiuolaikiniame Lietuvos mene ['Aestethics' and 'Sociality' in Contemporary Lithuanian Art] (2008) 3 *Tracts of Culture*.

[46] Ramūnas Čičelis, 'Kabinetinės kultūros sugrįžimas' [The return of the cabinet culture] kulturpolis.lt (2017) (Lithuanian only) <http://www.kulturpolis.lt/tv-trajektorijos/kabinetines-kulturos-sugrizimas/>.

not fixed but dramatised, interpretations had the same effect as fixed meanings. While this article compares *Culture Court* to *Court* by discrediting the former as a failing of high culture, the final critique of this article resonates with the important concerns for cultural legal studies: 'What is left is to wish for the creators of the show is to get the smallest audience and the least popularity, because *Culture Court* is a subtly dangerous show – it brings back the practice where literature and other types of art are made to order with that order being dictated by the dominant ideology. *Culture Court*, in its form, is a result of post-colonial thinking and, in its contents, a plainly repressive show.'[47]

This thesis will reveal how each show has impacted on the perception of judicial authority in Lithuania.

4 *Researcher*

I am in a very privileged position to notice, and most importantly, I can articulate and speak to the negation of law as a cultural legal scholar. But this is not 'a privileged product of office'[48] as I attempt to explain my role as a researcher by taking a jurisographic perspective. The term 'jurisography' was first used by Ann Genovese and Shaun McVeigh to describe 'the practice of writing jurisprudence through history, or as history'.[49] Since cultural legal studies 'is best understood through its jurisography, through its histories and trajectories, its people and places, its connections and relations, its actualities',[50] therefore, I start by admitting that initially, my interest was sparked by the question why people do not obey law.

[47] Ibid.
[48] Olivia Barr, 'A Moving Theory: Remembering the Office of Scholar' (2010) 14(1) *Law Text Culture* 44.
[49] Leiboff and Sharp, above n 33, 9.
[50] Ibid.

I developed this interest after participating in training for judges and judges' associates in Lithuania in 2015. However, what shaped the current project was the idea brought up by my supervisors to use 'the creative media […]to address issues of law and justice'.[51] Freedom in designing the project allowed me to approach this research as a creative practice. I suggest that the key takeaway from this type of experiment is that the designed project acted as a prompt to create a theatrical encounter as a form of practice and through this practice imbricated responsiveness into myself.[52]

Through moving offices and enfolding of practices, I 'made strange'[53] what was everyday for me and started my own transformation. Therefore, what was acceptable for me before cultural legal studies now is not, yet past experiences keep shaping my ways of being. Therefore, as a cultural legal scholar, I call for a deep reflection on the circumstances and consequences of the disembodied judicial ideal for those who seek to adhere to it and to their audiences. Next, I offer some reflections embedded in actuality, not in abstraction.

Within institutional and media narratives, images of detained judges could be seen as an important aspect shaping public consciousness through the intersection of the ideal of a judge and legitimacy of the legal system. Media images of detained judges being taken to a court hearing create a particular controversy. In the Lithuanian scandal alluded to earlier, surprise about these judges being handcuffed arose in the public space, the

[51] Desmond Manderson 'A Note on the 25th Volume' (2021) 25 *LTC Performing theatrical jurisprudence.*

[52] Sean Mulcahy and Marett Leiboff, 'Contents & Introduction, Law Text Culture' (2021) 25 *Law Text Culture* 1. My supervisors played the starring roles, without their support and guidance none of this would have happened, so did scholars and performers in a myriad online and face-to-face workshops and Conferences that I attended, as well as invisible anonymous peer reviewers shaped my practice of research.

[53] Timothy D Peters, 'Reading the Cultural legal and speculative law made strange studies, theology fiction' in Cassandra Sharp, and Marett Leiboff (eds), *Cultural Legal Studies: Law's Popular Cultures and the Metamorphosis of Law* (Taylor & Francis Group, 2015) 252.

response was a justification that police officers have an authority to do so.[54] For example, the photo below depicts handcuffed Lithuanian Supreme Court Judge Egidijus Laužikas:

Figure 1.1 *BNS Photography Depicting Handcuffed Lithuanian Supreme Court Judge Egidijus Laužikas*

Note. Available at LRT.lt (24 February 2019)[55]

I am reminded here about Goodrich's warning that 'insertion of my view and my picture does personalise the perspective. What is significant and now very common is that there is no further analysis of the image'.[56]

Yet, as a qualitative researcher, I draw on my prior experiences that shape my interpretations to reflect why I use this image. Perhaps I use this image to help me convey

[54] Gytis Pankūnas, LRT.lt Pareigūno atsakas prabilusiems apie „antrankių šou": tokių priemonių imamasi ne šiaip sau [In response to individuals who complained about the "handcuff show", the official stated that such actions are not done lightly] <https://www.lrt.lt/naujienos/lietuvoje/2/247448/pareiguno-atsakas-prabilusiems-apie-antrankiu-sou-tokiu-priemoniu-imamasi-ne-siaip-sau>. However, the amended laws scrapped the use of the handcuff altogether: Keičiamos asmenų konvojavimo taisyklės – antrankiai nebeprivalomi [The handcuffs are no longer required as the rule for escorting persons are being changed] BNS (18 May 18) <https://www.lrt.lt/naujienos/lietuvoje/2/1179425/keiciamos-asmenu-konvojavimo-taisykles-antrankiai-nebeprivalomi>.

[55] Valiauskaitė, Mizgirdė, above n 2.

[56] Peter Goodrich, *Advanced Introduction to Law and Literature* (Edward Elgar Publishing, 2021) 110.

what is difficult to articulate, or to evoke empathy for the detained judges. In particular, this photograph reminds me of the arrested persons I encountered while working in the Lithuanian court. I recognise a space, an atmosphere that 'remain fully material ... . But their matter vibrates with law, thickens with command, quickens with direction'.[57] Therefore, I hesitate to believe that the handcuffed person is a judge. Afterall, besides being a Supreme Court justice (currently suspended due to the investigation) he is an educator.

As a judge's associate in Lithuania, I participated in at least two lectures delivered by this person. I had no reason to doubt his adherence to judicial ethics, but I left Lithuania in 2016, prior to the corruption scandal and investigation. In addition, this image clashed heavily with experiences of corruption I encountered in Australia. When former premier of NSW Gladys Berejiklian was accused of corruption, equally confusing to me was her silently stepping down from office.[58] Why didn't I see her photographed in handcuffs?

This reveals my uncertainty in responding to the crisis conditions that is an important theme emerging from the fieldwork. Goodrich argues that 'the appeal to the senses is primarily to sight as the most direct path to persuasion'.[59] He notes that visual pictures

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[57] Andreas Philippopoulos-Mihalopoulos, 'To Have To Do With The Law: An Essay' in Andreas Philippopoulos-Mihalopoulos (ed), *Routledge Handbook of Law and Theory* (Taylor & Francis Group, 2018) 480.

[58] 'Ms Berejiklian served as premier from January 2017 until she stepped down from the role and quit politics on October 1 last year amid an anti-corruption probe which centred on her private life. The Independent Commission Against Corruption had announced that same day it was investigating Ms Berejiklian's conduct involving a potential conflict of interest over her relationship with former Wagga Wagga MP Daryl Maguire. The watchdog is yet to deliver its findings, following a hearing held in November. Her "close personal relationship" with Mr Maguire was exposed during ICAC's Operation Keppel investigation into the former MP.' '*Former NSW premier Gladys Berejiklian appointed to new position at Optus*' By Heath Parkes-Hupton (11 Feb 2022) <https://www.abc.net.au/news/2022-02-11/nsw-gladys-berejiklian-new-job-at-optus/100822356>.

[59] Goodrich, above n 56, 122.

are not an exclusive mode of sensational persuasion, because common law judges are exposed to the persuasive power of images through 'the figures of speech being the means by which the orator renders reason vivid (vivide rationes) and brings the actions described before the eyes of the auditor'.[60] I suggest that civil law judges also work with metaphors but those are coded within the abstract legal norms.

Abstract constructions like *soviet legacy*, or *exploitative media* enable distancing from the lived experiences.[61] Instead, as a theatrical jurisprudent in training, my concern is to interrogate the experiences of being a judge embedded in the circumstances of a democracy in flux as expressed in the conversations with the participants. This is what my thesis elucidates.

5 *Outline of the Thesis*

After setting the stage for the study in this chapter, I provide critical analysis of the relevant research and explain how this thesis aims to advance this knowledge base in Chapter 2. Next, in Chapter 3, I explain the alignment between my research question and the methodological approach, including an overview of the research material collection and analysis process that helped unpack judicial experiences and perceptions of popular culture. Three subsequent analysis chapters, Chapters 4, 5 and 6, show how stories emerging from an encounter with fictional court programmes illuminate the ways that judges negotiate and embody legal meanings. Comparing differences and commonalities of the articulation of law, justice, authority, and power through the TV shows is a concern

[60] Ibid.
[61] Marett Leiboff, *Towards a theatrical jurisprudence* (Routledge, 2019)15.

of the last chapter, Chapter 7, where I reflect on the main findings and implications for the practice and further research.

CHAPTER 2

LITERATURE REVIEW

A *Introduction*

To frame this chapter that outlines the literature review, I will share a story.

This study is informed by the research material that I collected during fieldwork in the summer of 2019 in Lithuania.[1] The return flight to Australia was hectic as this was a busy travel season, and even more so, as I was travelling with my young children. Finally, on the last leg of the journey I was informed that my seat was double-booked. I do not know who got 'the seat',[2] but all that mattered was it was not me. I was so upset;[3] I made a dramatic scene exposing my 'uncontained self'[4] to the audience of ticketed spectators, disturbing their wait to board that flight. When it was made clear that I would definitely not be boarding that flight, I helplessly retreated to a more private corner, still sobbing. Then a concerned lady-traveller (ticketed) came to comfort me, reminding that my two small kids were watching, and that I was in a public space.

This story evokes 'spatial justice'[5] and seeks to reiterate how *footprints* are entwined with a messiness of law in movement, and tensions between affective politics of the jurisdictions. Finding Barr's (2010) conceptualisation of 'a place from which to speak'[6] is a big relief because an uncomfortable explanation is already so clearly articulated

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[1] This research including the fieldwork and professional editing services was sponsored by the University of Wollongong.

[2] Andreas Philippopoulos-Mihalopoulos, 'The movement of spatial justice' (2014) *Mondi Migranti* 17.

[3] Please do not worry, I received multiple and quite generous compensations afterwards.

[4] Marett Leiboff, *Towards a theatrical jurisprudence* (Routledge, 2019) 16.

[5] Philippopoulos-Mihalopoulos (2010) defines 'concept of spatial justice as the desire of an individual or collective body to occupy the same space at the same time as another body' Philippopoulos-Mihalopoulos, above n 2, 17.

[6] Olivia Barr, 'A Moving Theory: Remembering the Office of Scholar' (2010) 14(1) *Law Text Culture* 41.

before me. This is the practice and not just a signifier. However, to my surprise, I feel the hesitation to Barr's (2017) insistence on mindfulness of the legal footprints. From Barr (2010, 2017) I learn awareness about responsibility of a common law subject at disrupting an atmosphere of singularity, yet through the desire to belong with what I understand as a very similar question – materiality as a process and a result. This is similar to the process of judging which is the topic of my research.

In my research, I started from spatial justice, so of course all hierarchies are my concern. Coming from post-Soviet Lithuania it was not so hard because I actually saw the hierarchies fall down and new hierarchies being built. After animating my theoretical framework with this story, next I explain my use of literature in more detail.

In responding to the challenges of the changing realities of judging in Lithuania as discussed in Chapter 1, I deploy cultural legal studies within a wider law and humanities field. Such positioning is driven by several motives. First, to ground my interest in the field that explores intersections of law and culture, is that the field is active and saturated, therefore informative about the major debates pertinent to my research topic – challenges to the judiciary posed by increasing visibility in various jurisdictions. The second motivation to frame the research problem through cultural legal studies is that this critique of law enables in-depth exploration of cultural judicial authority. Due to the active developments in 'enfolding and complecting'[7] techniques, this approach cultivates flexibility by staying alert to the current challenges. Insights generated this way can enrich or even challenge the more autonomous explorations. Therefore, cultural legal studies

[7] Leiboff, above n 4, 38. Also, see Marett Leiboff and Cassandra Sharp, 'Cultural legal studies and law's popular cultures' in Cassandra Sharp and Marett Leiboff (eds), *Cultural Legal Studies: Law's Popular Cultures and the Metamorphosis of Law* (Taylor & Francis Group, 2015) 3-28.

provide the means to interrogate active (trans)formation and operation of a legal phenomenon. Finally, positioning a problem of responsiveness within the performance turn, a potential of theatrical jurisprudence, as performed or else through the participants, can be deployed in the interrogation of a tension between challenges of responsiveness and 'technization'.[8]

B *The Cultural Legal Studies Approach to a Contextual Study of the (Trans)formation of the Judicial Authority in Lithuania*

In this part, I introduce the problem of my research through broader debates within the field of law and humanities. Then the scope is narrowed down to questions pertaining to the topic of formation of a legal phenomenon through popular culture in cultural legal studies and a performance turn.

1 *Cultural Legal Studies and the Role of Stories*

I am interested in a (trans)formation of judicial authority in flux conditions from the cultural legal studies' perspective. So, this work sits within the field of antipodean cultural legal studies. The field of cultural legal studies is defined 'as multiple modes of engagement … [to think] how law could be metamorphosed through popular cultures'.[9] A hallmark of cultural legal studies – a notion of law's popular cultures – encompass various forms and practices employed in questioning law. It is an animation of 'the agency of law's popular cultures'[10] that enables cultural legal scholars to interrogate re(shaping) of legality, justice and politics of law. By engaging with law's popular cultures, cultural

[8] Leif Weatherby, 'Intermittent Legitimacy: Hans Blumenberg and Artificial Intelligence' (2022) 145 (49)1 *New German Critique* 33. See Section 3 of this Chapter, where I explain this notion and its use in my research.
[9] Leiboff and Sharp, above n 7, 19.
[10] Leiboff and Sharp, above n 7, 5.

legal scholars not only explore the shifting shapes of law, and cultural developments of legal phenomenon, but also investigate potential to unmask 'the feelings, desires, conflicting impulses and wishes that circulate within the law'[11] through these practices.

One way to do this exploration of the shifting shapes of law is through visual storytelling. For example, Silbey's (2015) interrogation of inculcation of a particular sense of morality using image reveals cultural formations of law. Turnbull's (2015) focus on a successful reception of the transnational crime drama by international audiences raises awareness about the effects of mixing the accustomed and novel aspects of genre and context. This has significance for my topic because it draws attention to the visual rhetoric in action and calls our attention to the import and export of meaning aspects in a cultural formation of the legal phenomenon within jurisdiction.

To explore a contextual (trans)formation of legal phenomenon through storytelling, Sharp (2015) developed the methodology of 'ethnographic modes of justice and ethics'.[12] A successful 'exploration of the various cultural discourses that bring the law into being as meaningful'[13] *depends on the* recognition of a complex 'embodiment of legal meaning'.[14] Recognising that both law and popular culture are porous and 'mutually-constitutive',[15] such a 'legal consciousness'[16] approach provides a frame through which it is possible to

[11] Richard Sherwin, 'Symposium: Introduction: Picturing Justice: Images of Law and Lawyers in the Visual Media' (1996) 30 (Summer) *University of San Francisco Law Review* 891, cited in Cassandra Sharp, 'Finding stories of justice in the art of conversation: Ethnography in cultural legal in studies' in Cassandra Sharp, and Marett Leiboff (eds), *Cultural Legal Studies: Law's Popular Cultures and the Metamorphosis of Law* (Taylor & Francis Group, 2015) 50.
[12] Leiboff and Sharp, above n 7, 6.
[13] Cassandra Sharp, 'Finding stories of justice in the art of conversation: Ethnography in cultural legal in studies' in Cassandra Sharp, and Marett Leiboff (eds), *Cultural Legal Studies: Law's Popular Cultures and the Metamorphosis of Law* (Taylor & Francis Group, 2015) 54.
[14] Ibid 53.
[15] Christy Collis and Jason Bainbridge, 'Introduction: Popular Cultures and the Law' (2005) 19(2) *Continuum: Journal of Media & Cultural Studies* 159-164.
[16] Sharp, '*Finding stories of justice',* above n 13.

explore 'the site of a complex encounter between contemporary culture and law'[17] and to understand a legal phenomenon beyond the exploration of how non-legal influences shape it or what effects they have on it.

Using this methodology, Sharp continuously demonstrated how approaching legal culture as a 'circuit of culture'[18] and acknowledging 'that lawyers and "non-lawyers" alike are both carriers of and contributors to differentiated aspects of legal culture'[19] facilitates in-depth analysis of meaning-making and transformation processes in various groups of individuals. Each of these studies demonstrated how a focus on 'overlapping cultural processes'[20] creates a dynamic framework rather than 'a static snapshot'[21] to study legal culture.

In *Hashtag Jurisprudence*, Sharp (2022) situated within a 'circuit of culture' a cyclical formation of legality through production of narratives about understanding of reality in crisis moments. This enabled her to uncover the embodied legalities that play out on social media in 'manifest and latent meaning-making practices that are grounded in culture'.[22] As demonstrated by Sharp's (2018) study of the Twitter responses to terror events, crisis

[17] Cassandra Elizabeth Sharp, *Becoming a Lawyer: The Transformation of Student Identity through Stories* (PhD thesis, University of Wollongong, 2006) 17.
[18] Ibid 57-58. Paul Du Gay, Stuart Hall, Linda Janes, Hugh Mackay, Keith Negus, *Doing Cultural Studies. The Case of the Sony Walkman* (Sage, 1997).
[19] Emanuela Mora, Eleonora Noia and Valentina Turrini, 'Practice Theories and the "Circuit of Culture": Integrating Approaches for Studying Material Culture' (2019) 13(3) *Sociologica* 62.
[20] See, for example, Lieve Gies, 'Explaining the Absence of the Media in Stories of Law and Legal Consciousness' (2016) 2(1) *Entertainment and sports law journal* (Coventry, England); Joseph G Champ, 'Horizontal Power, Vertical Weakness: Enhancing the "Circuit of Culture"' (2008) 6(2) *Popular communication* 85. For joint methods of 'circuit of culture' and material culture see, for example, Elizabeth Shove, Mika Pantzar, Matt Watson, *The Dynamics of Social Practice: Everyday Life and How It Changes* (Sage, 2012); Mora, Noia and Turrini, above n 19, 59.
[21] Stewart Macaulay, 'Presidential Address: Images of Law in Everyday Life: The Lessons of School, Entertainment, and Spectator Sports' (1987) 21(2) *Law & Society Review*, 213.
[22] Cassandra Sharp, *Hashtag Jurisprudence: Terror and Legality on Twitter* (Edward Elgar Publishing Limited, 2022) 54.

provokes 'a storied critique of legality and justice through the emotional experience and expression of fear'.[23] This way, by drawing on the adapted ethnography in cultural legal studies developed by Sharp (2015), I reveal an active construction of judicial authority[24] from within a different context (Lithuanian televisual culture) and address the aspects of legal consciousness through the meaning-making processes that operated in the focus group discussions and interviews about crisis conditions in Lithuania.

Summary

Collectively, the literature outlines a critical role of cultural legal studies in facilitating an in-depth exploration of legal consciousness. These studies have shown how this approach facilitates holistic exploration of a cultural legal phenomenon. Since my fieldwork circumstances are embedded in the judicial corruption scandal, therefore, 'circuit of culture' is a helpful way to study changes in crisis events because within it can be revealed 'points of contradiction and tension as portals through which to investigate how these various forms of power are compounding and delimiting conditions of possibility for social change'.[25] Since experiences are formative of the self (Leiboff, Sharp, 2015), exploration from the participants' perspective contains a challenge to notice implications of law (Leiboff, 2019) in the conditions of flux.

[23] Cassandra Sharp, '#Vulnerability - Expectations of Justice through Accounts of Terror on Twitter' (2018) 2 *Journal of Oxford Centre for Socio-Legal Studies* 1.
[24] Sharp, 'Finding stories of justice', above n 13, 54.
[25] Sarah Banet-Weiser, and Kathryn Claire Higgins, 'Television and the "Honest" Woman: Mediating the Labor of Believability' (2022) 23(2) *Television & new media* 132-133.

2 *Challenges of Judicial Visibilation in the Law and Humanities Research*

The field of law and humanities provides a solid research background because of a jurisdictional framing of the debates concerning law and culture.[26] The topics of judicial pictures-making and interpretation are especially relevant for this research. For example, tensions between growing visibility of the courts and a role of judge are discussed by Dutch judge, Judge Gaakeer (2018). She correctly argues that whatever circumstances the duty of a judge is 'to mediate between the world of the rule of law in democratic societies and the lives of their citizens'.[27] By comparing the judicial profession to playing a role, Gaakeer (2018) argues that under the mask of 'objectivity, fairness and impartiality'[28] is hidden a 'managed heart' … that requires 'emotional labour'[29] from a judge. In disagreement with Gaakeer's proposed narrative wisdom for addressing the gaps in law, Wiersinga (2021) instead proposed to 'let cultural expertise come into their decisions … yet still within the frame of "legal realities"'.[30]

However, this approach fails to take a mediation of reality itself into account.[31] And this is important because '[t]he strategy that hides the nature of mediated reality as a strange world also must occlude our sense of unmediated reality as different from the mediated'.[32] In Chapter 1, I have already indicated Goodrich's (2021) argument about an efficacy of

[26] For an overview of the interdisciplinary research on judiciary see for example Moran (2020), Gaakeer (2014).
[27] Jeanne Gaakeer, Judging from Experience: Law, Praxis, Humanities (Edinburgh University Press, 2018) 384.
[28] Ibid 318.
[29] Ibid.
[30] Hermine C Wiersinga, 'The Judge and the Anthropologist: Cultural Expertise in Dutch Courts: Cultural Expertise and The Legal Professions' (2021) 11 *Naveiñ Reet: Nordic Journal of Law and Social Research* (NNJLSR) 156.
[31] This is a concern of cultural legal studies, see section 2 in this chapter.
[32] Barry Brummett, 'Mediating the Laws: Popular Trials and the Mass Media' in Robert Hariman, *Popular Trials Rhetoric, Mass Media, and the Law* (University of Alabama Press, 1993) 182.

visual persuasion in common law judgments.[33] Similarly, Moran's (2021) comprehensive study of judicial visibility employs visual culture to explore the judicial institution in England and Wales. Building on an active field of the research, his study shares a belief in 'the important role that visual culture plays in the formation and operation of the judiciary as an institution'.[34] Moreover, in part, as a response to Robson's (2007) call for a contextual diversity, this study prompted a further exploration of 'the enduring colonial visual cultural legacy, and its picture making traditions'[35] in other jurisdictions.

But the jurisdictional operation of images of law is not so clear. This problem, observed by Gaakeer (2014), is a transfer of the adversarial features to the continental tradition that complicates jurisdictional focus. Sharing a concern with Sherwin (2006) that 'aesthetics are constitutive of (legal) reality',[36] her study called to attention a possible manipulation of law through popular influences and encouraged scholars to explore formation of meaning in the process with a possible 'cultivation of productive prejudices'.[37] Contextual formation of legal meanings within diverse EU cultures is emphasised by juxtaposing it with a historical example of a vision evoked by the metaphor 'in America the law is king'.[38] Also, in the context of French television audiences' engagement with American visual culture, Villez's (2010) study *Television and the Legal system* argued not only that within television series a 'collective national image'[39] is encoded deliberately or otherwise but also that local audiences develop abilities to interpret it.

[33] See Chapter 1.
[34] Leslie J Moran, *Law, Judges and Visual Culture* (Taylor and Francis, 2020) 47
[35] Ibid 5.
[36] Jeanne Gaakeer, '"It's my culture, stupid!" A Reflection on Law, Popular Culture and Interdisciplinarity' in Michael Asimow et al (eds), *Law and Popular Culture: International Perspectives* (Cambridge Scholars Publisher, 2014) 293. Citation omitted.
[37] Ibid 294. Citation omitted.
[38] Ibid 288.
[39] Barbara Villez, *Television and the Legal system* (Routledge, 2010) 9.

According to Machura (2005) such abilities are underpinned by a somewhat shared understanding of justice principles and inspiration of 'American patterns of telling'[40] for the small and big screen production elsewhere.

What has not been considered within these diverse explorations of the cultural formation of judging practices through mediated reality within the law and humanities field, is the how and what of the post-Soviet legality context. Therefore, exploration of the conditions that shape changing judicial authority in Lithuania can offer unique insights because of an entangled Soviet legacy with Europeanisation. Recently, Cserne (2020) argued that an ideological identification becomes revealed through the disputes about judicial approaches in Central and Eastern Europe, while Bencze (2022) points out a connection between formalism and judicial populism in Hungary, enabling judicial reasoning without an explicit reference to the 'public sentiment'[41] as fostering public trust. And despite limitations of Avbelj's (2015) purification approach by assigning 'illiberal pedigree'[42] exclusively to Central and Eastern Europe as risking to remain 'in a permanent transition, which sooner or later becomes normalcy',[43] which is juxtaposed to the established democracies, he correctly problematises the lens through which a 'so-called transformative power of Europe'[44] is perceived and brings *a gaze* into attention.

Operation of *the gaze* is a concern of the Baltic postcolonial critique. For example, Annus (2022) conceptualises operation of such *gaze*:

[40]Stefan Machura, 'Procedural unfairness in real and film trials: Why do audiences understand stories placed in foreign legal systems?' in Michael Freeman (ed), *Law and popular culture* (Oxford University Press, 2005) 148–159.
[41] Mátyás Bencze, 'Everyday Judicial Populism' in Hungary' (2022) 47(1) *Review of Central and East European Law* 37-59.
[42] Matej Avbelj, 'Transformation in the Eye of the Beholder' in Michal Bobek, Jeremias Adams-Prassl (eds), *Central European Judges Under the European Influence* (Bloomsbury Publishing (UK), 2015) 289.
[43] Ibid 291.
[44] Ibid 275.

> The gaze issuing from the Western other, the gaze directed back at the Western other, construction of the Other as a scrutinizing mirror—all this is part of this metonymical selection; the Western gaze that sees, judges, and admires becomes part of the national self-image; and this self-image becomes reflected back through the Western gaze, entering into a circular process of mirroring the reciprocal, selective gazes.[45]

Two implications are important here. First, this rhetorical constitution of the self-image through the 'Other' points to an expanding polarisation in nationality discourse with an edition of the Western other to the already developed critique of 'different conceptualizations of the [Soviet] past'.[46] As Seuffert (2003) noted, the constitution of a nation is intimately related to territorial jurisdiction in the colonial setting both via assimilation to the homogenous standard and through the creation of internal heterogeneity. These two strategies enable marginalisation of a difference in the production of political subjectivity 'through the consolidation of power in a centralised jurisdiction'.[47]

Aside from implying growing polarisation in nation-building, this self-image through the gaze indicates that, in addition to the ideological, the emotive element determines political identity. Mažeikis (2010) articulates this through the neurolinguistics as a mechanism of cultural indoctrination in identity construction with verbal, musical, and visual influences on cognition.[48]

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[45] Epp Annus, 'A post-Soviet eco-digital nation? Metonymic processes of nation-building and Estonia's high-tech dreams in the 2010s' (2022) 36(2) *East European Politics and Societies* 413. See this article for an overview of some stereotypes (self)assigned in non-Western cultural politics.

[46] Epp Annus, 'Between arts and politics: A postcolonial view on Baltic cultures of the Soviet era' (2016) 1(47) *Journal of Baltic Studies* 6.

[47] Nan Seuffert, 'Shaping the Modern Nation: Colonial Marriage Law, Polygamy and Concubinage in Aotearoa New Zealand' (2003) 7 *Law Text Culture* 187.

[48] Gintautas Mažeikis, Propaganda ir Simbolinis Mąstymas [Propaganda and Symbolic Thinking] (Vytauto Didžiojo University, Kaunas, 2010) 340.

The question of a complex construction of self-image is important within a wider affective turn in a field of law and humanities. I draw on Philippopoulos-Mihalopoulos' (2019) conceptualisation of 'affects as posthuman manifestations of excess that link up bodies'.[49] By connecting affect to law, he claims that an atmospheric ontology entail staging – dissimulation of emergence instead of engineering; yet by capitalising on the desire to belong it is exactly centralised jurisdiction that prevents atmospheric change. This way, Philippopoulos-Mihalopoulos (2019) explains, how in addition to state law, a disciplining control between the bodies operates as 'Foucauldian power'[50] making law omnipresent, shifting power from 'right' to 'technique', and from 'law' to 'normalization'.[51] In these conditions, a line between a biopolitical subject as a life or a body (Sharp 2022: 146) and their performance of a social role (Hardie-Bick, Hadfield 2011: 21) is blurred.

If '[j]urisdiction is law's speech',[52] one way to reveal its operation is by dismantling colonial legacy (Seuffert, 2003). Consequently, my study of a cultural (trans)formation of the Lithuanian judicial authority follows the invitation with the contextual exploration of the judicial image production and management in a post-Soviet context.

Summary

Since the cultural critique of judiciary and vice versa is a well-trodden field of research within the field of law and humanities, in this section I reviewed only the work directly related to the challenges posed by a growing visibility of the judicial institution and problematised construction of self-image within a post-Soviet context. In light of this, my

[49] Andreas Philippopoulos-Mihalopoulos, 'Law is a stage: from aesthetics to affective aestheses' in Emilios Christodoulidis, Marco Goldoni, Ruth Dukes (eds) Research Handbook on Critical Legal Theory (Edward Elgar Publishing Limited, 2019) 210.
[50] Ibid 217.
[51] Fred C Alford, 'What would it matter if everything Foucault said about prison were wrong? Discipline and Punish after twenty years' (2000) 29(1) *Theory and Society* 128.
[52] Peter Rush, 'An Altered Jurisdiction: corporeal traces of law' (1997) 6 *Griffith Law Review* 150 cited in Nan Seuffert, 'Shaping the Modern Nation' (2003) 7 *Law Text Culture* 187; also see Moran, above n 33.

interrogation of the (trans)formation of the cultural judicial authority through the research material collected in the focus groups and interviews with Lithuanian judges and media creators requires reflection on the jurisdiction and gaze. After explaining a broad interest in challenges to the judiciary posed by increasing visibility in various jurisdictions within the field of law and humanities, next I narrow my focus to the cultural legal studies approaches applied to the exploration of the cultural shaping and reshaping of law. As such, I turn to cultural legal studies and explain rationale behind my choice of a cultural legal studies approach to gain a deeper understanding of the changes of judicial authority.

3 *The Theatrical Turn and a Problem of Responsiveness*

Theatrical jurisprudence (Leiboff, 2019) is a jurisprudence that challenges through a range of genres, techniques and practices influenced by theatre; it insists on creating encounters that demand a response and embodiment of the 'theatrical' (Leiboff, 2022).[53] Practice through the 'theatrical' (Leiboff, 2022) confronts rational limitations in exploring visual culture raised by visual jurisprudence (Sherwin, 2011). However, this type of theatre does not seek to overcome the rational challenge with a return to the origins of law 'in the poetic (or mythopoeic) imagination [that] allows us to celebrate the power and value of the aesthetic and ethical sublime in the contemporary legal theory and practice'.[54]

[53] This type of approach is demonstrated in Chapter 6 that informs an answer to the research question about the shaping of Lithuanian cultural judicial authority through the reality judging that was used to create such a challenging encounter.

[54] Richard K Sherwin, *Visualizing law in the age of the digital baroque: Arabesques and entanglements* (Routledge, 2011) 55.

Instead, this approach as 'a Goodrichian minor practice as dramaturgy'[55] enables us to reveal rationality as a crucial feature of rhetoric and unsettle rational poetics.[56] Within the jurisliterature field, Goodrich (2021) makes a very valid point that the rhetorical operation of a legal reason is revealed through the use of images in the common law verdicts. He also encourages to notice a role of geographical and historical grounding in the constitution of an emancipatory 'minor jurisprudence'.[57] Through theatrical jurisprudence, Leiboff (2019) also tells us that embodied historical awareness is needed to prevent 'legal antitheatricality'.[58] So next I will explain how this critical practice informs my research problem of 'technization'.[59]

First, I want to elaborate on my borrowing and adapting theatrical jurisprudence to Lithuanian legality. Through the practices of post-dramatic theatre, theatrical jurisprudence aims to imbue responsiveness into the legal body and gives tools to challenge common law practices of antitheatrical legality to notice when law goes wrong (Leiboff 2015; 2019). In contrast to 'law as drama [that] distorts through its obverse',[60] Leiboff (2019) calls for legal performance manifested by responding and reacting bodies. In this mode, law develops through unsettlement that engages every aspect of one's existence, like the appeal court's sympathetic responsiveness to the experiences of an unconscious rape victim as a challenge to limits of logos set by the trial judge[61] or a challenge of 'the raw viscerality… in the dumbshow in Monkey'[62] that rewrites the

[55] Leiboff, above n 4, 57, 28.
[56] See Chapter 7 about a potential of the theatrical encounters to reveal rhetorical operation of legal reason.
[57] Peter Goodrich, *Advanced Introduction to Law and Literature* (Edward Elgar Publishing, 2021) 149.
[58] Leiboff, above n 4, 57.
[59] Weatherby, above n 8, 33.
[60] Leiboff, above n 4, 31.
[61] Ibid 7.
[62] Ibid 91.

bodies. These are just a few examples that illustrate the remedial role of theatrical jurisprudence (Leiboff, 2019) and its importance for law.

I am indebted to theatrical jurisprudence as I borrowed and adapted its wide range of tools to critique 'technization'[63] in my research: the theatrical as an encounter and experience that demands bodily response (Leiboff 2005: 33, 35–36; Leiboff 2015: 29–30), noticing (Leiboff, 2005), theatrical antonyms that enable noticing by revealing what law is missing (Leiboff 2019: 138), challenges to the algorithmic lifeless practice of law (Leiboff 2019: 4) and performance as practiced humanity (Leiboff 2020: 334). Bringing this into a Lithuanian context, and particularly important for my research, is the challenge of theatrical jurisprudence (Leiboff, 2020) to detached lawyering, and this challenge manifests through the politics of legal responsibility. As a means for this purpose, theatrical jurisprudence besides lived experiences offers reoriented performance as an enacted practice of cultural legal studies:

> Performance … is a practice and an ethic, and reveals itself as having the potential to function as a jurisprudence of response and responsibility, through the techniques that performance imbues in the self. [64]

This is an important issue in the context of my research, where the theatrical (Leiboff, 2022) is needed for a 'body … inscribed [with law of command]'[65] to overcome the rhetorical challenge in the jurisdictional atmosphere.

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[63] Weatherby, above n 8, 33.
[64] Marett Leiboff, 'Challenging the Legal Self Through Performance' in Simon Stern, Maksymilian Del Mar, and Bernadette Meyler (eds), *The Oxford Handbook of Law and Humanities* (Oxford University Press, 2019) 332.
[65] Sharp, *Hashtag Jurisprudence*, above n 22,146.

As an application of the theatre approach could be seen my bringing together of the 'insiders and outsiders'[66] that helps to 'notice the unnoticeable'.[67] For example, by deconstructing encounters between law and theatre, Crawley (2010) demonstrated how theatricality is able to unmask law by revealing its force. Theatricality, for Crawley and Trantier (2019) is 'ritual, symbolism and theatre ...[but] [t]he law's constitutive dependence on such theatricality is a double-edged sword: in order to preserve its own claims to impartiality and rationality, the law must suppress its own tendency towards spectacular, emotional, visual theatricality'.[68] Therefore, 'onstage, the force of law appears as farce and the "illusion of legitimacy" is revealed as such.'[69] However, for me more relevant is Leiboff's (2022) concept of theatricality as practice of noticing what law cannot through the tools of post-dramatic theatre. And this is especially helpful when law stages itself in a post-Soviet context.

This way, by applying theatrical jurisprudence to interrogate jurisprudences developed by Lithuanian judges and media creators prompted by the visual montage, my aim is to engage with the real as a practice because this enables revealing what could go unnoticed by law (Leiboff, 2022). Theatre returns us to the body, but not in a dialectical tension. Through a staging lens (Philippopoulos-Mihalopoulos, 2019), 'aestheses [is understood] in terms of affects … as posthuman manifestations of excess that link up bodies'.[70] My main concern in this posthuman emergence/engineering moment is an obscuring aspect

[66] Karen Crawley, Kieran Tranter, 'A Maelstrom of Bodies and Emotions and Things: Spectatorial Encounters with the Trial' (2019) 32 *International Journal Semiotics of Law* 623.
[67] Marett Leiboff, 'Theatricality' in Peter Goodrich (ed) *Research Handbook on Law and Literature* (Edward Elgar Publishing Limited, 2022) 46. To *notice* is a challenge of theatrical jurisprudence through theatrical disruptions that demand response.
[68] Crawley, Tranter, above n 65, 623.
[69] Karen Crawley, 'The Farce of Law: Performing and Policing Norms and Ahmed in 1969' (2010) 14(1) *Law Text Culture* [xxix] 264.
[70] Philippopoulos-Mihalopoulos, 'Law is a stage', above n 48, 210.

of 'technization'.[71] I borrow from Weatherby (2022) this notion of technization as 'a shortcut from speech or idea to action, crystallizing or setting grooves in the world along which we appear to move with a speed that resists "reflection" …[72] It matters because this technization is linked with transparency that operates by revealing yet obscuring the world, and 'is continuous with the basic semantic operation of communication in general. To indicate to another human, to impress on her or convince her, of anything at all, is to replace physical action with verbal stuff'.[73]

As I will show in the thesis, this process prompts to avoid reflection by 'reintegrating itself as an "authentic" part of the semantic, embodied situation in which humans find themselves'.[74]

So this is at stake when bodies are in a state of flux. Philippopoulos-Mihalopoulos (2019) provides useful illustrations of how seeking relevance law withdraws and stages itself as an 'anomic comfort or security, health and safety, common sense, media morality, the right choice'.[75] As an implication of 'affective staging of law',[76] diffused power is harder to see but not more subtle.[77] This means that law's circularity is driven and maintains (the supposed) 'need' to distance from risks – a motive to exclude and create difference.

Moran's (2020) study of cameras in court demonstrated construction of digital hierarchical 'panopticon or nonopticon'[78] rendering what 'court considers to be "a balanced, fair and accurate" representation of the proceedings',[79] and since 'judicial

[71] Weatherby, above n 8, 33.
[72] Ibid.
[73] Ibid.
[74] Ibid. See Chapter 5.
[75] Philippopoulos-Mihalopoulos, 'Law is a stage', above n 48, 216.
[76] Ibid 210.
[77] Alford, above n 50, 146.
[78] Ibid 128.
[79] Moran, above n 33,165.

authority could be seen as an image of power constituted in the minds',[80] theatre with decolonial aesthesis critique is valuable to further explore how law's jurisdictional language as narrative, visual acoustic or other languages enables rational poetics and drive an atmosphere of hierarchical 'panopticon or nonopticon'.[81] According to Marxist critique, law's transformative positive potential is obstructed by 'capitalist aesthetics'.[82] The theatrical critique of technization is a move forward by showing that 'the "veil of symbols" is not a garment that can be removed but the location where action and consciousness, performance and insight, matter and idea, fail to merge, yet constitute legitimacy';[83] however it is not exclusive to capitalism.

This way, this thesis contributes to chipping Foucauldian power operation by calling attention to decentralisation informed not through coercion and violence as constructed through the atmospheres of difference and hierarchies, but instead to think about the transformative practices of inclusive participation in an exchange manner[84] as 'sharing authority'.[85] As framed through this chapter, this thesis seeks to 'challenge the notion of a disembodied ideal jurist'.[86]

Summary

Since judicial authority could be seen as an image of power constituted in the mind[87] together with Moran's exploration of visual culture, that is a problem to be approached

[80] Arun Sagar, Law and crisis: Conjunctions, correlations, critiques (2022) 13(1) Jindal Global Law Review 2.
[81] Alford, above n 50, 128.
[82] Philippopoulos-Mihalopoulos, 'Law is a stage', above n 48.
[83] Weatherby, above n 8, 36.
[84] See Chapter 6, where I use 'technization' critique to illustrate how a lifeworld is erased and to show how skipping the formation of meaning reduces judging to a mere function.
[85] Sharlene Nagy Hesse-Biber and Patricia Leavy, *The Practice of Qualitative Research* (SAGE, 2. ed., 2011) 113. See Chapter 7.
[86] Sean Mulcahy and Marett Leiboff, 'Contents & Introduction, Law Text Culture' (2021) 25 *Law Text Culture* 6
[87] Sagar, above n 79.

with adapted ethnography and 'circuit of culture' (Sharp, 2015, 2022). Therefore, factors shaping changing judicial authority in Lithuania can be revealed by unpacking interactions between space and bodies that inscribe law into responding bodies. By bringing together Lithuanian judges and media creators, I build on an approach of 'insiders and outsiders'.[88] My approach of relational cultural practice addresses this gap through theatrical jurisprudence (Leiboff, 2019).

This research brings diversity to the field by focusing on transitioning towards Western legality of Lithuania. In this context, my exploration of 'the conditions of noticing and the shift towards the practice of performance amongst the judiciary'[89] through the judicial reactions and responses to the challenges of law as part of this dynamic process is used to disturb circularity of the construction of the digital ideal and technization.

C *Conclusion*

The main goal of this chapter was to provide a critical summary of the scholarship related to my research topic about cultural formation of judicial authority. Building on Chapter 1, the Discussion began with an argument that in light of the debates about the ways to respond to challenges brought by changing conditions of judging, including increasing visibility, further research should be undertaken for a more complex and deeper exploration of the role of popular culture in shaping conditions of responsiveness but also a concept of judicial authority itself.

The studies of active meaning-making processes and relationships circulating in the social construction of popular legal storytelling reveal a potential to contribute to the critique of

[88] Crawley, Tranter, above n 65, 623.
[89] Mulcahy and Leiboff, above n 85, 11.

rational poetics, and it seems especially apt to investigate constructions of mediated judicial authority in a less explored Lithuanian context. Insights about responsiveness from this context primarily contribute to the debates in the performance turn, though there is a potential of this study to add a fresh perspective not only in cultural legal studies but also in wider research focusing on the challenges faced by the judiciary in changing legal realities. By exploring the operation and (trans)transformation of the mediated judicial authority in the Lithuanian context this research contributes to cultural legal studies by enacting new ways to practice good law by 'complecting and enfolding'[90] of the actual or literary encounters between various cultural practices and disciplines. In doing so, the study also builds on the ethnographic practices within a cultural studies framework. This methodology is the focus of the next chapter.

[90] Leiboff, above n 4, 38. Also see Leiboff and Sharp, above n 7, 3-28.

CHAPTER 3

METHODOLOGY

A *Introduction*

In this chapter, I describe and justify a methodological framework – how the study was designed and conducted. In the previous chapters, I explained that the thesis seeks to explore the (trans)formation of Lithuanian judicial authority and takes a cultural legal studies approach by focusing on the production of fictional judging in *Court* and *Culture Court*, its use in the meaning-making practices by judges and media creators, and a role of the fictional judging in a (trans)formation of a concept of judicial authority in Lithuania. These aims help to answer the research question whether and how the newly developing concept of judicial authority in Lithuania is influenced or affected by media and television judging programmes.

This study is qualitative in nature and draws on the research material generated in the fieldwork in Lithuania. As a cultural legal scholar, I focus on a potential of reimagining the law through the encounter between law and culture. Such encounters were created through the responses of the participants – Lithuanian judges and TV creators – to the fictional television court programmes *Court* and/or *Culture Court* in the individual interviews and focus group discussions.

As a method of doing cultural legal studies, this research design builds on the practices within a cultural studies framework by connecting adapted ethnography (Sharp, 2015) with performance (Leiboff, 2020). This way, it challenges the legal self to shift from a knowledge production to the relational practice of law and has a potential to facilitate development of a shared authority.

To explain in detail how the design of research aligns with the research question and aims, this chapter starts by justifying a research approach from a theoretical perspective. In providing justification for my choice of the qualitative methods, I explain that the main reason to choose a qualitative approach is a result of my interest in an active formation and operation of legal phenomena through popular culture. Next, I overview and compare the qualitative methods used for the exploration of popular culture and judicial performance (Moran et al 2010, Moran, 2020), formation of legal experiences and perceptions through popular culture (Leiboff, Sharp, 2015). Then I discuss opportunities and challenges that I experienced in the fieldwork. I conclude the chapter with my reflections about the interpretation methods used for the analysis of the research material.

B *Research Design*

Discussion of the main design choices is important because it demonstrates how a research design connects with the research aims and helps to demonstrate my responsible and ethical research practice.

1 *Justification of the Research Methods*

Within the framework of cultural legal studies, my justification for a qualitative over a quantitative approach to the research is that my epistemology is postmodern (Bloomberg, Volpe, 2019). Since I live in a world of multiple truths, so from my worldview anything other than qualitative research would be too reductionist. This aligns with cultural legal studies' assumptions about an importance of culture in forming this multitude of the contestable truths. In cultural legal studies (Sharp, Leiboff 2015), the encounters

between culture and law are understood as 'a living and active jurisprudence'[1]. This implies a potential of such encounters to invite the debates about current challenges faced by law and the practical (re)imaginations of good laws. And that is why this thesis seeks to explore an interrelation between law and culture, through the engagements of Lithuanian judges and media creators with popular culture.

Current developments in the field include emergence of various critical approaches that seek to harness 'the hermeneutic potential of jurisprudence'[2] for reimagination of law. The underpinning assumption is that our understanding of law and its composition is shaped by reality, with a particular attention to the cultural aspect of these conditions (Sharp, Leiboff, 2015; Sharp, 2021).

(a) Inspiration for the Research Design

Methodologically, this research was inspired by 'a hybrid form of ethnography and critical jurisprudence'[3] which was developed by Sharp (2015) to explore how law becomes meaningful through the cultural discourses and is guided by an assumption that law is constituted in an everyday life. Similarly, in oral history, storytelling is the form that talking takes. This form is shaped by a unique narrator's style through language (Etter-Lewis, 1991). Comparison of these styles is important not only due to its potential to disrupt the patriarchal context of oral history development (Hesse-Biber, Leavy, 2011), but also due to its potential to give a voice to the people who could 'themselves be accustomed to the silence'.[4]

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[1] Cassandra Sharp, *Hashtag Jurisprudence: Terror and Legality on Twitter* (Edward Elgar Publishing Ltd, 2022) 12.

[2] Sharp, *Hashtag Jurisprudence*, above n 1, 11.

[3] Cassandra Sharp, 'Finding stories of justice in the art of conversation' in Cassandra Sharp, and Marett Leiboff (eds), Cultural Legal Studies: Law's Popular Cultures and the Metamorphosis of Law (Taylor & Francis Group, 2015) 53.

[4] Sharlene Nagy Hesse-Biber and Patricia Leavy, *The Practice of Qualitative Research* (SAGE, 2. ed., 2011) 145.

Coming from this context myself,[5] I developed an interest in symbols and non-verbal elements in the research material. As a result, my approach could be seen as a practice taking after a 'performance-oriented narrative folklorists'[6] but shaped by theatrical jurisprudence (Leiboff, 2019) and '[t]heatricality [that] helps us to see. And to question what we assume or think we know.'[7] This way, my research is building on the ethnographic practices within a cultural studies framework by connecting ethnography with performance as a method of doing cultural legal studies.

(b) Review of the Relevant Methodologies.

In the previous chapter, I identified a gap in research, and justified the purpose of research to explore how an awareness of the body (trans)forms an understanding of the judicial role, and conversely, the consequences that flow from a negation of the judge as a responding body. Since growing studies of judicial cultural image formation and its perception by audiences reveal tensions inherent in these processes,[8] I am prompted to take the implications of amplification of the popular modes of judging into account. Examples of the judges' academic reflections on their experiences of judging through popular culture, like Gaakeer (2019) and Herz (2010, 2015), are significant in that they unsettle dogma and reveal judging as a cross-cultural practice. Moran, Skeggs and Herz's (2010) study of judicial performance through reality television court show, *Das Jugendgericht* (The Youth Court), and Moran's wide-ranging (2020)

[5] See Chapter 2 where I connect Moran's (2020) call to explore the colonial legacies of picture making with the concerns of the law and listening in the context of 'Jurisdiction is law's speech' (Rush 1997:150 in Seuffert, 'Shaping the Modern Nation' (2003) 7 LTC:187).

[6] Maggi A Michel, [Review of Women Escaping Violence: Empowerment through Narrative, by Elaine J Lawless] (2004) 63(4) *Western Folklore* 331.

[7] Marett Leiboff, 'Theatricality' in Peter Goodrich (ed), *Research Handbook on Law and Literature* (Edward Elgar Publishing Limited, 2022) 46.

[8] For example, Jarutienė, Valickas (2014); Valickas et al (2015); Valickas, Vanagaitė (2017); Sharyn Roach Anleu, and Kathy Mack, *Performing judicial authority in the lower courts* (Springer, 2017). See Chapter 2.

study of judges and visual culture could be seen as examples of such cross-cultural judging practice examinations. I suggest that these studies could have been more useful to understand the cultural operation of judicial authority if approached from the cultural legal studies perspective, as will be illustrated with the following discussion of the methods employed in several studies.

Engagement with cultural artefacts could be explored not only as fertile material to generate insights about challenges faced by the legal profession but also as a less formal training in dealing with such challenges. One of the many assumptions guiding such exploration is that practical experience may help to prevent 'the conditions of injustice'.[9] Also, based on her extensive experience in teaching and research, Sharp (2004, 2015, 2015) developed an interdisciplinary empirical methodology and persistently argued for the interrogation of law and justice within the public consciousness through popular culture. These ethnographic practices within a cultural studies framework focus on the constitution of law in everyday life through the encounters of law and culture. This methodology of adapted ethnography, grounded in the philosophical hermeneutics (Sharp, 2004), was a pivotal inspiration for me to devise research for the exploration of the (trans)formation of legal phenomenon by unpacking meanings and experiences from the participants' stories stimulated by the fictional court programmes through the focus group discussions. As such, I briefly explain the rationale behind my choice of the focus groups and interviews as the ethnographic research methods.

[9] Marett Leiboff, 'Theatricalizing Law' (2018) 30(2) *Law & Literature* 363.

(c) Justification of Focus Groups and Individual Interviews

Since the thesis aims to explore the (trans)formation of judicial authority through popular culture in the Lithuanian context, and little is known about this topic, I chose the focus groups as a method of exploration able 'to unearth individual narratives and a group narrative that is larger than the sum of its parts'.[10] However, I had to make changes to the initial plan,[11] and used individual interviews alongside focus groups. While interviews and focus group discussions provide opportunity for conversations about law in fiction and reality, the audience of such storytelling practices differ significantly between these two strands of research. Focus group participants not only tell their stories to the researcher like interviewees do, but they also can discuss their viewpoints with other participants 'in a mutually stimulative and spontaneously reactive environment, and this in turn generates an extremely fertile ground of analysis.'[12]

Moreover, since my research uses visual prompts that I prepared myself, one limitation with this approach is that it obscures the role of researcher in the generation of meaning. The importance of this was noted by Moran (2021) who brings in the question of power in the practices using visual culture as a research tool. This necessitates a discussion of the power dynamics in the research practice, which I do in the last section of this chapter when explaining my interpretation strategies. Consequently, my research method as a practice takes inspiration from the law and performance field by being 'inventive and experimental'[13] in the collection and

[10] Hesse-Biber and Leavy, above n 4, 189.
[11] Please see the next section where I provide a detailed account of the fieldwork activities.
[12] Sharp, 'Finding stories of justice', above n 3, 54.
[13] Sean Mulcahy, Methodologies of law as performance (2022) *Law and Humanities* 18.

interpretation of the research material while striving for integrity and credibility of the employed research tools.[14]

(d) Ethics

The primary material for the analysis comes from the ethnographic fieldwork which involves the human participants. Therefore, as a qualitative research practice, it requires constant ethical awareness as 'a doorway to reflexivity'.[15] To begin with, it was my responsibility as a researcher to conduct research in compliance with the *National Statement on Ethical Conduct in Human Research 2007* and all University Committee Standard Operating Procedures and Directives and adhere to the principles of honesty, rigour, transparency, fairness, respect, recognition, accountability and promotion. These requirements were implemented through preparation of the Participants Information sheets and Informed Consent Forms. In addition to the guidance provided by the codes, my training as a court mediator in Lithuania and more than ten years' experience as a judge's associate in Lithuania were relevant in modelling and coordinating an effective communication among the participants and encouraging their contributions to the open conversations.

After explaining how the qualitative methodologies that I chose have been proven to suit for exploration of the research problem, in the next section I provide a detailed account of my fieldwork practice in Lithuania, and ongoing research material interpretation in Australia during the COVID-19 pandemic.

[14] Linda Dale Bloomberg, Marie Volpe, *Completing Your Qualitative Dissertation: A Road Map From Beginning to End Fourth Edition* (Sage, 2019)
[15] Hesse-Biber and Leavy, above n 4, 72.

2 *Conducting the Research*

Since my interest lies in the empirical examination of the formation and operation of cultural judicial authority through the Lithuanian media creators' and judges' perceptions and experiences stimulated by the encounter with fictional reality judging, fieldwork is the primary source of qualitative inquiry. I use research material generated in the focus group discussions and interviews[16] that I conducted in 2019 with the Lithuanian judges and the creators of a historic Lithuanian television judge show.

Initially, in order to explore the process of constructing televised judicial authority, overt observations of the filming process of *Culture Court* had been planned. However, it could not be conducted because the show was no longer in production at the time of the fieldwork. Another important adjustment to the initial research plan was introducing individual interviews with two creators of *Court* and judges along with focus groups discussions between judges. The purpose of using these two strands of field research was to explore how judges and creators themselves reflect on the judicial authority that is portrayed in these programmes. Finally, the interpretive methods (e.g., critical discourse analysis) were chosen to identify the various forms of implicit and explicit judicial authority that is perceived among different audiences. However, as the analysis progressed, I found that theatrical jurisprudence (Leiboff, 2019) offered additional indispensable tools for me to make sense of the emerging results.

[16] University of Wollongong (UOW) Application for HREC Approval, approved by Human Research Ethics Committee on 05/07/2018; UOW Amendment to protocol number 2018/327, approved by Human Research Ethics Committee on 01/04/2019 and UOW Amendment to protocol number 2018/327, approved by Human Research Ethics Committee on 29/04/2019. The interviews and focus group discussions were conducted in Lithuanian, transcribed, and translated to English by the author.

As this brief overview shows, the research practice was unpredictable and required a continuous flexibility and creativity as the research progressed. The office of the critical scholar demands for such practice to be embodied (Leiboff, 2015, Leiboff, 2019). I used guidelines for the PhD researchers to carefully weave reflections throughout the thesis within three layers (Bloomberg, Volpe, 2019). Two of those layers are intentionally shaped by my previous professional roles. I have no previous experience in conducting fieldwork so under the researcher's mask I seek guidance not only from theory but from my mediator training to leverage this lack. However, it is a 'theatrical presence'[17] that guided this interrogation – even though I am still gradually becoming aware of it. For example, during the analysis I discovered that I asked the participants in the interviews naive questions that now I attribute to 'a Goodrichian minor practice as dramaturgy'.[18] It is during the interpretation process that I appreciate those interventions that now seem even more valuable as I read deeper into the law and performance scholarship. This interpretation will be explained more fully in the analysis chapters.

(a) The Clips

At the beginning of a focus group discussion, the judges had an opportunity to watch the extracts from two Lithuanian fictional courtroom television shows. Using material from these shows I created a short clip and used my personal laptop to demonstrate it during the fieldwork. It was a montage of the final scenes in the *Court* and *Culture Court* shows. First, I demonstrated for the judges a decision in a civil case announced on the 28 February 2003 episode of the Lithuanian television show *Court*, which aired from 2001–2004 and was produced by the production company Just.tv. Next, the judges watched a

[17] Marett Leiboff, *Towards a theatrical jurisprudence* (Routledge, 2019) 13.
[18] Leiboff, above n 17, 57.

verdict announced in the 9 March 2018 episode of the Lithuanian television show *Culture Court*, which aired from 2017–2018 and was produced by the production company *Pradas*. Though *Court* and *Culture Court* were produced in significantly different contexts, the production companies chose the same cultural form of expression. The *Court* fits perfectly in a genre described as courtroom television shows; it even closely resembles US popular television show *Judge Judy*. While *Court's* publicity campaigns insisted that the portrayed court procedure was real, *Culture Court* openly declared that it was not a real court.[19]

Viewing of the visual extracts depicting the announcement of the fictional courts' verdicts provided a brilliant point of departure. From a practice perspective, this is because recent reforms in Lithuania have fundamentally transformed the verdict as a part of the judicial process. Since 1 July 2018, cameras are allowed to film the announcements of verdicts in civil and criminal cases in Lithuania. In addition, the judicial verdict is an ultimate judicial performance and probably the least impromptu of all judicial tasks. Since law's visual manifestations participate in the enactment of the normative world,[20] lawyers are encouraged to engage with law's creation of the world through images.[21] Law depends on the techniques of 'eros or drama of the screen'[22] to stage itself.[23] In this context, engagement with the television courtroom programmes, as the agents of 'law's popular

[19] See Chapter 1 for my conceptualisation of these shows as the agents of 'law's popular culture' (Marett Leiboff and Cassandra Sharp, 'Cultural legal studies and law's popular cultures' in Cassandra Sharp, Marett Leiboff (eds), *Cultural Legal Studies: Law's Popular Cultures and the Metamorphosis of Law* (Taylor & Francis Group, 2015) 5).
[20] Carolin Behrmann 'The Mirror Axiom: Legal Iconology and The Lure of Reflection' in S. Huygebaert et al. (eds) *The Art of Law* (Springer, Cham, 2018) 43-60.
[21] Peter Goodrich, *Advanced Introduction to Law and Humanities* (Edward Elgar Publishing, 2021)
[22] Peter Goodrich, 'Europe in America: Grammatology, Legal Studies, and the Politics of Transmission' (2001) 101 *Columbia Law Review* 2077-2078.
[23] Andreas Philippopoulos-Mihalopoulos, 'Law is a stage: from aesthetics to affective aestheses' in Christodoulidis, Emilios; Dukes, Ruth; Goldoni, Marco (eds), *Research Handbook on Critical Legal Theory* (Edward Elgar Publishing, 2019) 201-222.

culture',[24] provides possibilities to explore the politics of such staging. Most importantly, a tension between fiction and reality shaped by the fictional court shows generates an exceptionally responsive space because it functions like 'the theatrical [which] is encounter, and a physical experiential encounter … that … expects us, requires us, to accept and respond to the things that simply occur.'[25]

After viewing the extracts of these shows, the participants were invited to reflect on a judicial role through the unstructured interviews or focus group discussions. Next, I explain in detail how I organised and conducted these fieldwork activities in Lithuania in 2019.

(b) Fieldwork Activities: Interviews and Focus Groups

The purpose of interviewing Lithuanian judges was to understand a formation and operation of judicial authority in response to the fictional courtroom television programmes *Culture Court* and *Court,* and the media in general. The research has been informed by six individual interviews with the judges, two focus group discussions and two individual interviews with the creators of a fictional reality judging show. While each research strand offered the unique insights as planned, flexibility and creativity during the fieldwork enabled the research to continue despite the obstacles that were encountered in the recruitment process.

(i) Judges

Initially, I anticipated organising two focus group discussions consisting of six to eight judges.[26] In general, the total number of recruited participants corresponds to the initial

[24] Leiboff and Sharp, above n 19, 5.
[25] Marett Leiboff, 'Law, Muteness and the Theatrical' (2010) 14 *Law Text Culture* 389.
[26] UOW Application for HREC Approval, approved by Human Research Ethics Committee on 05/07/2018.

plan, however, in some instances only a few judges expressed interest in the study, therefore, individual interviews were conducted instead of a focus group discussion.[27] Out of 150 judges who were sent invitations, 17 expressed their interest in participation, of whom 6 agreed to be interviewed. Further, 11 judges formed two focus groups of 4 and 7 participants accordingly. The representation of judges based on the time of their training is as follows: approximately one third of participants trained before the Restoration of Independence of Lithuania (1990), slightly less than one third trained post-proclamation but before accession to EU (2004), and the largest group of judges trained after Lithuania became a member of EU. Actually, one focus group consisted of exclusively post EU accession-trained judges while no individual interviews were conducted within this cohort. In contrast, the majority of interviews occurred with the judges trained before the proclamation of independence with only one judge being trained in between. The largest focus group consisted of one judge who was trained before the proclamation of independence and then of equal parts from the judges trained in between or after the start of EU membership. The male and female distribution was almost equal with the eight male judges and the nine female judges taking part in the research. Finally, four judges were involved in teaching practice apart from their judicial roles in the courts of the first instance.

The focus groups were conducted in the courts of the first instance of the two largest Lithuanian cities Vilnius and Kaunas. Both focus group discussions took place in the courts' designated spaces for conferences and meetings as opposed to the individual interviews which took place in the judges' work offices. The focus group spaces were

[27] UOW Amendment to protocol number 2018/327, approved by Human Research Ethics Committee on 01/04/2019 and UOW Amendment to protocol number 2018/327, approved by Human Research Ethics Committee on 29/04/2019.

chosen by the courts' spokespersons, while for the individual interviews almost all judges opted to meet in their personal cabinet settings. One exception was a judge who chose to have an individual interview at Martynas Mažvydas National Library of Lithuania. In terms of the fieldwork timing, the majority of judges generously offered their lunchtime breaks for the interviews and focus group discussions except the three judges who chose before or after lunch as a more convenient time. In general, I noticed that the judges approached participation with caution and interest.

Broadly, both *Court* and *Culture Court* received diverse feedback, ranging from 'the most horrific program of all'[28] to the modest appreciation of an image of a fictional judge as 'impeccable'.[29] Some judges admitted that the court programmes are good to have on in the background at home and provide an interesting coverage on pressing issues. While ranging from mild irritation to extreme outrage, both shows *Court* and *Culture Court* were recognised by most judges as not suitable to represent a real court. However, the focus on legal consciousness in this research implies unpacking importance of popular culture in the construction of meaning rather than a verbatim reading of the comments, and the analysis chapters demonstrate these processes in detail. No less important was to explore how fictional judicial authority was produced, and two individual interviews with the creators of *Court* provided a unique opportunity to do so.

[28] Interview with Judge Ride (Lithuania, 2019) 2.
[29] Interview with Judge Echo (Lithuania, 2019) 3.

(ii) Media Creators

The interviews with the creators of *Court* (Sage and Tae[30]) were fortuitous opportunities.[31] This is worth noting as the initially planned TV focus groups were impossible due to the withdrawal of the creators of *Culture Court* from participation in the research. I feel indebted to a wonderful acquaintance (a television editor/producer) who arranged an individual interview with Tae. I recruited Tae by an email, and we met two months later. Tae did not propose a preferred meeting place and accepted the one I offered. The interview with Tae took place at 11 am on 6 May 2019. For me it was the third out of total ten fieldwork meetings, but it was the first with the creator of a television courtroom program. We met in a bright spacious meeting room at the Martynas Mažvydas National Library of Lithuania in the centre of Vilnius. Tae seemed slightly tense but relaxed as the interview progressed. So did I. I am extremely grateful to Tae, who, during our interview, offered me Sage's contact details. I contacted Sage and over the phone we agreed to meet at 12 pm on 15 May 2019 in Antakalnis, a respectable Vilnius area near a church. For me it marked the midpoint in the fieldwork meetings and the last one with TV creators. Once we met, Sage offered to go to a nearby café and we conducted the interview there. We sat on a quiet outside terrace, but since it was a lunchtime there were a few other people there. Sage seemed to feel more natural in the surroundings than I did but once the interview began, I felt so too.

[30] Neither of them agreed to be identified, and so they have been allocated with pseudonyms.

[31] In a qualitative research, thorough designing should not be overestimated; however my research illustrates how important it is to leave some space for a lucky coincidence as well. Also see Trond Arne Undheim, 'Getting Connected: How Sociologists Can Access the High Tech Élite' in Sharlene Nagy Hesse-Biber (eds), *Emergent Methods in Social Research* (Sage Publications, 2006) 23.

For Tae this show was the first step in her TV career. Afterwards she participated in many popular and succsesful TV projects. Sage published a book, co-hosted a talk show, and got involved in political activities. The interviews progressed with a great rapport. I obtained many new insights from Tae and Sage, and our discussion helped me to connect some points in the judicial interviews and focus groups.

Both Tae and Sage felt defensive in their reflections about *Court* and why this format was chosen but became surprisingly cooperative once we started talking about the portrayal of the judge in this show.

These individual interviews with the creators of *Court*, as well as the judges' interviews and focus group discussions prompted by the visual extracts from *Court* and *Culture Court*, generated a rich material for my research problem. The next step was to use it for the empirical study of the formation and operation of cultural judicial authority through the Lithuanian media creators' and judges' perceptions and experiences. Because of the diversity of the research material collected to solve the research problem, the challenge of alignment between the multiple elements demanded creativity. In the last section of this chapter, I discuss the development of my interpretation strategies that I have applied in this research, and some challenges and opportunities arising from this practice.

3 *Interpretative Practice*

The process of interpreting the research material was informed by my reflections on the changes that I have made to the initially planned interpretation methods[32] resulting from the significant changes in world conditions and in my assumptions as a researcher. These

[32] Leslie J Moran, 'Researching the Visual Culture of Law and Legal Institutions: Some Reflections on Methodology' (2021) 48(S1) *Journal of law and society* S4.4

reflections together with the fieldwork notes seek to shed light on the fieldwork politics and consequently contribute towards transparency and quality of the development of my research findings.[33] As expected, the interpretation of the focus group discussions was one challenge, while several narratives emerging through coding did not make sense to me until I discovered theatrical jurisprudence (Leiboff, 2019). Another opportunity to cross legal boundaries in interpretation practice emerged during translation of the manuscripts that employed metaphors in their stories. In what follows, I will explain each of these points in more detail.

Since a qualitative interpretation focuses on contextualised cultural meanings, it is important to reflect on my own framing and the ways it could affect the analysis. My generational belonging enfolds fragments from the last years of the Soviet regime, Independence fights and transition to democracy, and Europeanisation, with understandings and biases formed on the way. After a few years in Australia I am still capable of reading cultural meanings and patterns, but my perceptions now are also shaped by experiences of scholarly and friendly connections, as well as by social distancing under lockdown in Australia.[34] While I interrogate the conditions of a shift from dogma to performance created through judges' engagement with the judge shows, conditions of my interrogation are shaped by the context of my position as a researcher.

(a) Reflections on the Fieldwork Context.

An intention of the following reflections on the circumstances of the fieldwork is to frame the context of a democracy in flux by enfolding extraordinary events with the everyday

[33] Bloomberg, Volpe, above n 14.

[34] Sean McVeigh, 'Office of the Critical Jurist' in Justin Desautels-Stein & Christopher L Tomlins (eds), *Searching for Contemporary Legal Thought* (Cambridge University Press, 2017) 386-405.

scenes that shaped my research practice in Lithuania. A day after one of the focus group discussions, Lithuanian artists won a top prize for the transformative, apocalyptic, and evoking opera performance 'Sun and Sea (Marina)' at the Venice Biennale,[35] and it might seem unconnected to the background of the fieldwork, however it is theatre, and theatrical jurisprudence (Leiboff, 2019), in particular, enabled me to complete the research. Similarly, it might appear irrelevant, but on the same day as the focus group, a popular Lithuanian TV presenter and editor of the political satire show *Dviračio šou* [*Bicycle Show*] passed away. However, this show was mentioned not only in this focus group but also in a few other interviews. Presidential elections, where independent economist Gitanas Nausėda replaced former Lithuania's first female president Dalia Grybauskaitė, had occurred during that month and this event also found its way into the interviews. Quite a few historical events happened earlier that year, like the Regional Court's verdict in the case of January events, the European Court of Human Rights recognition of the Soviet repressions against Lithuanian resistance as genocide, spying politics, and most of all a judicial corruption scandal that made international headlines. These events set the scene for the fieldwork as a democracy in flux with ongoing negotiation of memory politics after almost thirty years since the end of the totalitarian regime.

Next, I set the scene by reflecting on my journey to record the very first interview in Lithuania. A passenger minibus was cruising on a provincial road while a popular radio host was tasking his audiences with imitating the sound of a chainsaw or dentist's drill. The driver found this to be very amusing, but suddenly launched himself into a tirade of

[35] Joshua Barone, 'Review: In Venice, an Opera Masks Climate Crisis in a Gentle Tune', *The New York Times* (online), 14 July 2019 <https://www.nytimes.com/2019/07/14/arts/music/sun-and-sea-lithuania-venice-biennale-review.html>, Audronė Žukauskaitė, Producing Bare Life in the Anthropo-scene (2020) *32*(1) *Nordic Theatre Studies*, 27-43.

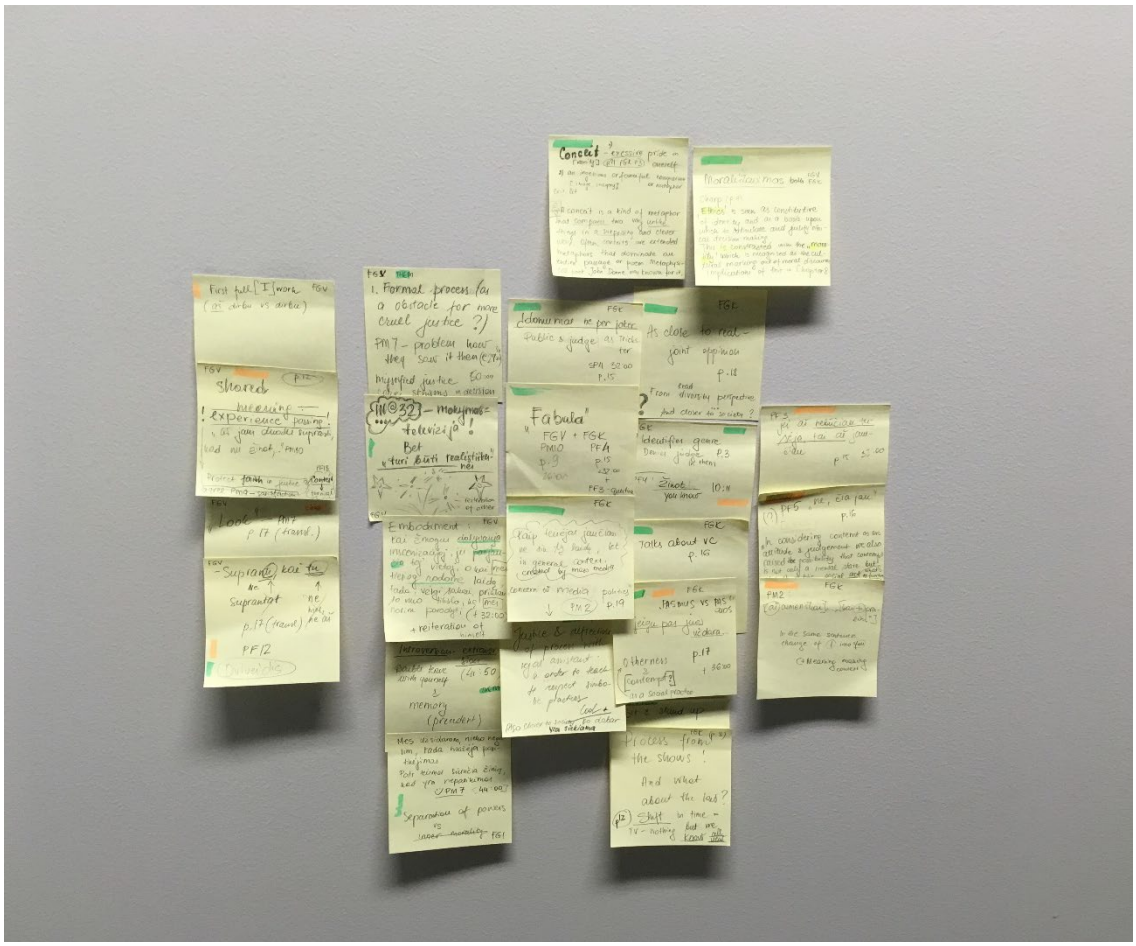
how dangerous plane travel is these days because the planes are piloted by migrants and insane persons. However, he immediately remarked that he had nothing against migrants. He was met with a stony silence from all the passengers, including me. I perceive this scene as painfully Lithuanian.

On my ongoing journey I overheard two people discussing the unjust power of the banks and the bailiffs. I heard a sincere expression of hope that this overarching authority would be diminished. On my return from this interview, on yet another bus, I witnessed a long forgotten iconic scene when the driver got very angry with a passenger who did not have the exact fare. The passenger appeared genuinely guilty for the driver not having change.

My field notes here mark the first conclusion that I made after the first interview: 'While mass media takes away respect from the judges (a depiction of corruption), courtroom programs like *Culture Court* could play a role in strengthening judicial authority.'[36] This is the start of the emerging themes for the analysis. During translation and transcription of the interviews and focus group discussions, exciting initial insights needed much closer critical attention. It was necessary to unpack not only what has been said but more importantly what meanings and narratives circulated within[37] and what the differences between narration styles[38] can reveal about Lithuanian law and culture. Meaning-making processes surrounding the themes of conflict and emotion provide especially insightful material for the analysis.

[36] Field notes, 1.
[37] Sharp, 'Finding stories of justice', above n 3, 53. Mark Stoner and Sally J. Perkins, *A Critical Apprenticeship in Rhetorical Criticism* (Routledge, 2004) 48.
[38] Hesse-Biber and Leavy, above n 4, 145.

Figure 3.1 *Emerging Themes on the Post-It Notes on a Wall in Research Room 67.215 at UOW*



(b) Unpacking Storytelling and Rhetoric

The research material analysis approach incorporates a manifold interpretative process of comparative critical unpacking. Addressed in this multilevel way, judicial stories not only report the different views of judges. As I have explained in the first section, they also illuminate processes and interactions of agentic audiences, resources that are drawn upon in perceptions, similarities and differences in the ways that judicial perceptions play together, how fictional judging or wider media is instrumental in perpetuation,

contestation, and appropriation of legal meanings as 'one aspect of what Cover conceptualised in his idea of the "nomos"'.[39]

One of the objectives of this research was to understand how the judges make meaning of a fictional judicial authority in the fictional court programmes *Court* and *Culture Court*. Therefore, inspired by Sharp (2006, 2012, 2015), I have adopted a seminal Katz and Liebes (1990) coding method:

> Referential statements treat the program as applicable to real life, whether social or psychological. Critical statements treat the program as constructions consisting of messages and narrative formulae.[40]

This division of the fieldwork material into two groups of statements enabled me to interrogate the interviews and discussions as 'text',[41] and in turn, reveal 'the rich and complex processes that comprise an individual's lived experience as expressed through the (re)telling of stories'[42] in response to *Court* and *Culture Court*. Worth mentioning is the constant commute between the referential and critical realms[43] and at times the switching was so dynamic that coding presented a challenge. I will use an extract of conversation in the smallest group discussion to illustrate how I applied the codes to the 'texts':

[39] Sharp, 'Finding stories of justice', above n 3, 53. See Chapter 2.
[40] Elihu Katz and Tamar Liebes, 'Interacting With "Dallas": Cross Cultural Readings of American TV' (1990) 15(1) *Canadian Journal of Communication* 53.
[41] Cassandra Sharp, 'Changing the Channel: What to Do with the Critical Abilities of Law Students as Viewers?' (2004) 13(2) *Griffith Law Review* 188.
[42] Sharp, 'Finding stories of justice', above n 3, 53.
[43] Ibid; Tamar Liebes and Elihu Katz, *The export of meaning: Cross-cultural readings of Dallas* (Polity Press, 1993) 53-54.

Table 3.1 *Illustration of coding*

Quotation	Codes Applied
Researcher: So, the next question is to what extent [the shows] correspond to the real world, to reality. Were you saying that [*Court's* judge] overacted?	Critical
Judge Gill: Well, I would say so.	Critical
Judge Dallas: [sights] Very simple, even elementary language, totally vernacular. Perhaps we try more somehow formally [simultaneous talk].	Critical Referential
Judge Gill: [simultaneous talk] Too strict while announcing the decision.	Critical
Judge Charlie: Hmm.	
Judge Gill: Too strict.	Critical
Judge Dallas: And usually [simultaneous talk] we stand up.	Commute from Critical to Referential
Judge Charlie: We stand up and we don't have any gavels [laughing].	Referential
Judge Dallas: Yes, there are no gavels.	Referential
Judge Reed: We have a gavel only at the Constitutional Court [simultaneous talk] in Lithuania.	Referential
Judge Dallas: Its purpose here probably is to strengthen [simultaneous talk] the impression.	Commute from Referential to Critical
Judge Reed: [simultaneous talk] Surely, it is for the impression.	Critical

This illustration is important because it shows several aspects of coding at once. First, it demonstrates how I adapted and applied the codes of 'referential and critical statements'[44] to my fieldwork material. It also illustrates an intense commute between the referential and critical realms as the participants contribute to the shared meaning making in this active discussion.[45]

After coding all the statements into the critical and referential realms, I did the descriptions of the statements in order to get in-depth understanding of the narratives

[44] Ibid.

[45] See Chapter 5 for the detailed analysis of this conversation.

circulating within the stories.[46] Moreover, to unpack and compare how judges in response to the fictional reality judging through storytelling 'participate in, and embody law and justice'[47] the research material was approached with an interpretative and more focused critical discourse analysis.[48] Therefore, the focus on the ways language functions in the meaning-making processes supplements interpretative narrative with the help of critical rhetorical and discourse analysis tools. The significance of narrative coding is that it enabled the consideration of the role of *Court* and *Culture Court* through narrative and visual storytelling in participants' meaning making.

(c) Interpreting Images, Metaphors and Theatre

Another set of interpretation techniques that I used are informed by theatre and performance. This use was intuitive at first,[49] so next I reflect on my practice of interpretation in an attempt to explain how I became aware of it. Inspired by Moran's (2020) explorations of the judges and visual culture in England and Wales, I focused on the 'enduring colonial visual cultural legacy, and its picture making traditions'[50] that manifested in the encounters stimulated by *Court* and *Culture Court* extracts.[51] One such example shows how cultural heritage interlaces one participants' critique of a judicial corruption scandal.[52] As will be seen in later chapters, it is the meaning-making processes around this event that presented me with the most challenges during translation of the manuscripts to English. In fact, during the analysis, participants' use of the metaphors

[46] I was inspired by Stoner and Perkins (2004) work. They explain that '[d]escription, as a process, amounts to characterizing the message under analysis' (Mark Stoner and Sally J Perkins, *Making Sense of Messages: A Critical Apprenticeship in Rhetorical Criticism* (Routledge, 2004) p.48).

[47] Sharp, 'Finding stories of justice', above n 3, 66.

[48] Ruth Vodak, 'Critical discourse analysis' in Clive Seale et al (eds), *Qualitative Research Practice: Concise Paperback Edition* (SAGE, 2006) 185.

[49] Leiboff, above n 17, 13. See Chapter 2 where I discuss law and theatre problem.

[50] Leslie J Moran, *Law, Judges and Visual Culture* (Taylor and Francis, 2020) 4.

[51] See Chapter 1 about reception of *Culture Court*.

[52] See Chapter 1 where I contextualise this.

prompted my awareness about the operation of rhetoric in the legal and political contexts. Such use can be illustrated with the following extract from a lengthy individual interview with Judge Finley:

> If there was no … commercial aspect in the media, then you wouldn't have a right to act as the fourth or fifth branch of the Government which enjoys many rights. But so that it was objective. So that it was a democratic watchdog of the State and the Society. But if it possesses this weapon, if we don't have a right to refuse you information, if you are protected by the Law on the Provision of Information to the Public, then all of the others, and the Constitution. In that case you should not sell articles, programs. Because some solicitors tell: 'We earn not for what is being published, but by bringing money to stop a publication or a broadcast'. This includes also the grands[53] from those very popular shows, those who escalate the justice system. So when you hear it from the inside, and when you see [sights] the result. They used to say, 'A newspaper can kill not only a fly, but a person'. So a program [can kill] as well. When you know society's [understanding of] the presumption of innocence, and trust in what has been said. Well, nobody cares that in four or five years [he] will be acquitted. You've been told already 'detained'. Not without a reason those filming's during detention, the handcuffing. So that's it, well nobody treats innocents this way. But where, where does it say that he is guilty? Yes. So from this perspective we are still in the Stone Age.[54]

After a thorough critique of reality judging as an educational asset, the conversation turns to discuss a political role of the media more generally. Despite the metaphor of 'the Stone

[53] Judge Finley here refers to the Lithuanian TV show business celebrities who create political comedy. See for example 'Lietuvos sou verslo grandai Arūnas ir Inga Valinskai' [Lithuanian show business giants Arūnas and Inga Valinskai] delfi.lt (online) 12 September 2014 <https://www.delfi.lt/veidai/archive/lietuvos-sou-verslo-grandai-arunas-ir-inga-valinskai.d?id=65830858> (Lithuanian only).

[54] Interview with Judge Finley (Lithuania, 2019) 5.

Age', metaphors of a killer media in this context could be interpreted as a link between the operation of publicity now and in the repressive Soviet past. One way that I see it operate is as a means to discredit media. Such framing, I suggest, illuminates the corruption as a tool to threaten the independence of judiciary, where the media overpowers judges and gains control over them. This illustrates how the emphasis on commerciality of the media and dark public attitudes in this interpretation can help to reduce a meaning of corruption phenomenon to its portrayal.

Once I became aware of a rhetorical operation of the narratives, I developed an interest in an 'affective staging of law'.[55] Consequently, I used law and performance to inform further analysis, and guidance from theatrical jurisprudence (Leiboff, 2019) was especially helpful while interpreting research material. Theatrical jurisprudence provided invaluable tools to interrogate the shift of the legal self from dogma to embodied practice of law 'because theatre takes us back to our bodies and how they attenuate law'.[56] Deploying theatrical jurisprudence, as performed through the participants of the research, reveals complex negotiations of legal positivism and the disembodied ideal of a judge, as well as a shift towards the practice of performance in the theatrical jurisprudence sense. Positioning this transition from dogma to practice on the tension between the fiction and reality provides in-depth insights on the development of noticing legal self, and what this means for judges in Lithuania.[57]

Finally, regarding the practice of interpretation of research material it is important to note that the role of qualitative researcher can be a power position in respect to the research

[55] Philippopoulos-Mihalopoulos, 'Law is a stage', above n 23, 210.
[56] Leiboff, above n 17, 31.
[57] See Chapter 6 which demonstrates how theatrical jurisprudence translates into performance-led methods of legal research.

participants (Bloomberg, 2019). My position as a researcher is complicated by the power dynamics determined by the fact that the research informants – judiciary and media creators – are in power position themselves. Therefore, as a post-totalitarian legal self, in this research I also advocate reflexive turn in the practice of doing cultural legal studies. For me, the guidance of theatrical jurisprudence (Leiboff, 2019) helped noticing implications of law. Through theatrical jurisprudence I have learned to search for prudence grounded in the body, to deconstruct and respond to the invitation of a shared feeling of fear in the control politics. What I appreciate most in this form of training is how it helped me to shift from the position of needing to 'impress/conform/pretend/manipulate/nobody cares anyway' to the position of 'oh, how could I be ignorant of that? I need to dig deeper'. This really changes the way of being the legal self.

I have always liked drama; you can see that from the design of my research or in my analysis choices. However, my awareness of this pull towards drama developed only through the current research practice. I am actively taking the office of the scholar here! What a relief to build on hesitance yet willingness to speak,[58] such a similar articulation in Barr's (2010) story. Apparently, I've rediscovered[59] 'moving theory'[60] because the digital file has been densely highlighted once I recently opened it supposedly for the first time.[61] I feel how my creativity entwined with an ability to notice[62] has developed, and

[58] Olivia Barr, 'A Moving Theory: Remembering the Office of Scholar' (2010) 14(1) *Law Text Culture* 40.
[59] I am surprised how similar this rediscovery is to Leiboff's rediscovery of Grotowski, see Leiboff, above n 17 100, 7.
[60] Barr, above n 58, 50.
[61] Leiboff, above n 17, 100.
[62] Ibid 10.

'instrumental ears'[63] start hearing theatrical not just dramatic voices. Through theatre, I became aware of how a specific experience of discomfort, as unpacked by Judge Gill,[64] is able to unsettle indifference to the implications of cultural practice, and how theatrical transgressions are not only crucial to disrupt antitheatrical legality, but they are able to dethrone rationality.[65]

C *Conclusion*

The purpose of this chapter was to link the research problem, which is a formation of legal phenomenon through popular culture, with the cultural legal studies approach, and to contextualise the study within the field through similar methodologies. This builds the credibility of the applied methodological framework. The examples of empirical studies that I reviewed are pivotal inspirations for my research. Building on these successfully applied methodologies, I then explained how I use research material collected in Lithuanian fieldwork that provides important contextual insights in response to the calls for exploration of legal consciousness through popular culture (Sharp, 2015) and in diverse contexts (Moran, 2020; Robson, 2006). In the second part of this chapter, I explained in detail my fieldwork practice by unpacking the circumstances of two focus groups and six individual interviews with judges, as well as two individual interviews with *Court's* creators. Then the chapter concluded with the discussion about the interpretation strategies that I have used to unpack the research material, and the reflections about my role as a researcher in relationship with the research participants. This methodology as a practice of cultural legal studies could also contribute insights to

[63] André Dao, 'What I Heard About Manus Island (When I Listened to 14 Hours of Recordings from Manus Island)' (2020) 24 *Law Text Culture* 16.
[64] See Chapter 4.
[65] See Chapter 5.

the studies of law and performance (Mulcahy, 2021). After a detailed explanation of the research design and practices, in the next chapter I present a discussion about the themes emerging from my analysis of the participants' meaning making through *Court* and *Culture Court*.

CHAPTER 4

THE REFERENTIAL REALM: STORIES AND BODIES

A *Introduction*

This chapter assesses the role of popular culture in the (trans)formation of the Lithuanian judicial authority and is informed by empirical data collected in 2019 via interviews and focus group discussions with Lithuanian judges and TV producers. Judicial authority as a cultural legal studies object is deeply problematic. Through proliferation of pictures, representations of a judge on popular court shows play a role in not only entertaining but also in shaping ways for thinking and being, alongside other legal and non-legal practices and techniques (Sharp 2015, Sherwin 2011, Moran 2020). Two Lithuanian fictional courtroom programmes *Court* and *Culture Court* were demonstrated to the participants to facilitate discussion about the effects of such shows. For the explanation of an emerging encounter, a wonderful quote from a few years before the fall of the Soviet Block by one of the harshest critics of totalitarianism in Lithuanian literature, appears to be especially apt:

> A human being is just a vessel where thousands of egos can fit, thousands of weary inner critters. A man is a vengefully rattling box that shelters those tired ones who, by the way, just pretend to be tired. A man is a creature looking in the mirror, he does not even know which of his faces he will ever see. If you look closer you could notice a hundred faces at once – soft, dreamy, twisted faces of the inner inhabitants, peeking out of that trinket box, plenty of different unblinking eyes. Not only faces – both masks and beast snouts and

> demons – all of them are equally important equally needed. That is why at every blink you are different, different, different.[1]

This mirror metaphor is helpful for the analysis of judicial meaning making through popular culture because the role of the shows[2] strongly resonates with it. Sherwin (2011), who coined the term 'digital baroque', invited development of 'a new mindfulness, one that integrates the affects of the body's senses with that mind's natural capacity to transcend itself in attentiveness to that which is other.'[3]

The chapter describes an analysis of referential statements revealing how an encounter with popular culture prompted awareness and negotiation of judging politics among the participants. Lithuania provides rich ground to explore changes in positivist legality because of the historical entanglement of different legal cultures, using theatrical jurisprudence to rethink the practices of judging. In conjunction with the Lithuanian TV producers' contribution, consideration of how real and popular dimensions interplay in this context provides tools to understand judicial authority and law in a different light, and the processes of its active constitution in the relation between law and popular culture. More broadly, it speaks about the urgency for rethinking the role of a judge and the relationship of courts with audiences as embedded in the circumstances of a transitional democracy in flux.

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[1] Ričardas Gavelis, Galbut [*Maybe*] 127-128 cited in Inesa Kvedaraitė, 'Soviet reflection in Ricardas Gavelis's short stories ('Intruders' and 'Punished' collections) (MD thesis, Vytautas Magnus University, 2019) 50.

[2] It also resonates with Lacan's argument that 'In the realm of images, we find our sense of self reflected back by another with whom we identify (who is paradoxically both self and other). Daniel Chandler and Rod Munday, *A Dictionary of Media and Communication* (Oxford University Press, online, 2016).

[3] Richard K Sherwin, *Visualizing Law in the Age of the Digital Baroque: Arabesques & Entanglements* (Routledge, 2011) 113.

Drawing on the active audience paradigm, a commute between fiction and the audiences' own reality is expected as they make sense through law's popular cultures (Liebes, Katz, 1993; Sharp, 2015). Analysis in this chapter compares participants' use of the stories to form legal expectations and understandings as they respond to the realism in *Court* and *Culture Court* as not a construction, but real. All participants' statements that relate fiction to real life were coded as 'referential reading'[4]. That is, '(i)n a referential reading, viewers use the narrative to connect popular fictions with real life, and so they will often relate to characters as if they are real people and in turn respond emotionally to them.'[5]

Sharp (2015) consistently demonstrated how individuals embody law in conversations about justice[6]. Indeed, in this chapter, first, I will show that in response to *Court* and *Culture Court*, the participants compared fiction to other courts' publicity measures, like mock trials and public hearings. They used memories and lived experiences to reflect on their role through the relationship with different audiences, revealing an operation of body politics in the facilitation of legal change in the post-Soviet legality. Next, I will show how this encounter prompts self-awareness on the tension between the judicial role and their bodies. Finally, drawing on postcolonial studies and theatrical jurisprudence (Leiboff, 2019), I will argue that provocations of *Court* and *Culture Court* incite a sense of slipping authority and negotiation of power.

[4] It is contrasted with a critical involvement that comprise comments about the programmes as fictional constructs. Tamar Liebes, and Elihu Katz, *The export of meaning: Cross-cultural readings of Dallas* (Polity Press, 1993) 114. See Chapter 3 for a detailed explanation of the coding and analysis techniques.

[5] Cassandra Sharp, 'The bitter taste of payback: the pathologising effect of TV "Revengendas"' (2015) 24(3) *Griffith Law Review* 515.

[6] See Cassandra Sharp, 'Finding stories of justice in the art of conversation' in Cassandra Sharp, and Marett Leiboff (eds), Cultural Legal Studies: Law's Popular Cultures and the Metamorphosis of Law (Taylor & Francis Group, 2015) 50.

B *The Ideal of a Dispassionate Judge and its Challenges: Stories and Bodies*

This thesis is concerned with the process of particular legal meaning-making through popular culture in a rather unstable context – Soviet postcolonialism.

This chapter turns to consider the complex interrelations between popular fictional legal depictions and legal consciousness in Lithuania, a country whose judicial system has been in a state of flux since the end of the Soviet era as it transitions from Soviet legality to EU judging practices. An initial analysis of referential statements suggested that judges use *Court* and *Culture Court* to problematise understanding of their role within two dominant narratives. In addition to a narrative informed by a belief that the judicial institution is entitled to obedience, I discerned another narrative underpinned by expectation of respect that manifested within two sub-themes of Soviet-inspired judge or non-Soviet judge. A deeper analysis shows how reality judging opens space to negotiate politics of authenticity and autonomy in transitioning democracy and reveals how stories are used to change the legal self.

1 *Trivia of Open Justice*

In this section, my focus is on the analysis of the statements that relate the programmes to the memories and lived experiences of the participants in order to examine the process of meaning making through popular culture. This process, it is argued, provokes in judges an awareness about lost superiority and the control of the normative judicial image. When participants share their experiences of the encounter, they reveal active negotiation of law and the place of judges in post-Soviet Lithuania.[7] By way of unpacking Lithuanian

[7] See Chapter 6 for my argument about continuity of Soviet legality and justice practices.

judges' referential involvement with two fictional courtroom shows, this part highlights the complex process of legal meaning making through the popular culture: as a judicial resistance to imagined accounts of law on the one hand or as a judicial embrace of alternative accounts of law on the other.

(a) Expectations and Impressions of Authority

In response to the programmes, the majority of the participants reflected on their role by turning to lived experiences and memories. For example, one participant, Judge Monti, without hesitation critiqued *Culture Court* judge's strictness and unprofessionalism[8] but then, unexpectedly, she related it to a personal experience and a memory about her colleague:

> Maybe in fact we are so strict; it is helpful to listen to yourself sometimes[9] … If I might add [a story about my colleague's evaluation] …In general, he is an emotional person and he brought tears to her [a litigant's] eyes. He hears civil cases, and he listened to himself [as recorded on voice recording] for the first time. He sits in the higher level of courts so the judges' associates are doing more work, and he does not have to listen to the voice recordings. And he confessed that he was scared when he heard the recording. I said that in this case we should accept as a positive that it was recorded. Well, I mean, he realises that he should actually change himself. Not for the reason that she wept as a result, but because he pondered how sometimes we say a phrase irresponsibly. And that our emotion, our tone matters. And a shake-up is sometimes necessary for you to feel that something needs to be rethought.[10]

By using the word 'we' to associate herself with the fictional judge, Judge Monti reveals an identification with the fictional judge to reflect on the ethics of judging instead of

[8] Interview with Judge Monti (Lithuania, 2019) 2.
[9] Interview with Judge Monti (Lithuania, 2019) 2.
[10] Interview with Judge Monti (Lithuania, 2019) 2.

responding to the programme as 'a source of pleasure, pain or satisfaction'.[11] In turn, this experience prompts reference to disciplinary measures preventing such judicial behaviour in real life. In my interpretation, a voice recorder in the memory about the colleague's evaluation and reality judging seems to share utility in fostering ethical change. On the one hand, this resonates with another European judge, Judge Gaakeer's argument that:

> a humanistic perspective on law that includes narrative fiction may…help us ask the right questions necessary for probing our awareness of ourselves and of others, and ideally lead to a critical reflection on the social roles we play, professionally and privately, and the expectations these roles engender in ourselves and in others ...[12]

However, Judge Monti's identification and memory prompted by the critique of representation, to the greater extent relate to the cultural legal studies argument that an 'experience of being, and encounter comes not in the register of abstraction, but in real, lived, actualities… [and] grounds *phronèsis*'.[13] I suggest that Judge Monti's comment helps embed reality judging programmes and makes sense of them in the meaningful context of transitioning legality as experienced by judges. That is, nuanced tensions between the judicial body and judicial role are revealed in the process of negotiation of the open justice politics. For example, this interplay is visible by connecting two of Judge Monti's comments made in the referential realm that reveal her concern not only with responsible judging but with making it visible as well. She had categorically rejected popular culture as a suitable form of informing society about courts, insisted on

[11] Richard Mohr, 'Identity Crisis: Judgement and the Hollow Legal Subject' (2007) 11 *Law Text Culture* 114.

[12] Jeanne Gaakeer, *Judging from Experience: Law, Praxis, Humanities* (Edinburgh University Press 2018) 227.

[13] Marett Leiboff and Cassandra Sharp, 'Cultural legal studies and law's popular cultures' in Cassandra Sharp, Marett Leiboff (eds), *Cultural Legal Studies: Law's Popular Cultures and the Metamorphosis of Law* (Taylor & Francis Group, 2015) 15.

broadcasting real court procedures, and shared an enduring impression from a cruel rape trial broadcast on Soviet television:

> I remember myself as a child. Probably it was one of the incentives to choose this profession. You are much younger, so I remember those times when uh it was the only show on television. It was undoubtedly Soviet times. It was a cruel crime and the whole procedure had been shown in its entirety on television. And it gave me the impression that I keep. I see that image now. … It left a great impression of what the court is. Respect for the court. I still see how the process was run.[14]

The recollection of the childhood memories was prompted by the firm rejection of fiction's educational role. Instead, the meaning assigned to this memory indicates the expectations of a strictly defined image of the legal process as authority enfolded with the beliefs in making visible the power of laws and courts. As Judge Monti redirects her attention from herself to the wider audiences of such an image, she reveals a shift in the audience's attendance to court:

> Well, if it is necessary, then we should show a real work of courts. Certainly, there are other forms, uh youth visit the courts. Certainly, you cannot listen to that procedure. It is a bit constrained because under sixteens are not allowed to the courtroom. Well, in general, according to our [rules of] procedure perhaps it is not necessary to see that, but the court hearings [are] public. Certainly, there were times when those listeners would come. Now it is a rare occasion, unless the community organizations assemble uh to defend somebody. They are present in a courtroom. But there is no such requirement as to come and watch a procedure.[15]

While Judge Monti firmly insists on a realistic image of courts, she acknowledges diversity of available forms of engagement, but also a shifting nature of such engagement. The audiences' intention of the visits to court is no longer spectatorship but an active

[14] Interview with Judge Monti (Lithuania, 2019) 4.
[15] Interview with Judge Monti (Lithuania, 2019) 5.

participation. This shift is in tension with Judge Monti's childhood expectations which she indicated as having a Soviet origin. Indeed, the Soviet courts were supposed to play a social education function in addition to an administration of justice. The publicity of courts proceedings was seen as facilitating the implementation of this function, especially in the criminal cases. It also was a disciplining tool for the judges and jury members. The press, radio and television served as the pathways to publicity to attract wide audiences. 'The principle of publicity enables public to observe activity of the courts and this helps to educate working classes in a communist spirit and to propagate soviet laws.'[16] I suggest that these Soviet methods of indoctrination are resonant with Judge Monti's expectations 'to control the circulation and use of imagery and hence to restrict access to it, and interpretations of it.'[17]

Indeed, one of the main concerns emerging from the referential statements is a control over the dissemination and interpretation of judicial virtues and values. Diverse existing ways of legal education for the public emerged as a major theme. These references were prompted by an evaluation of representations of judges in *Court* and *Culture Court* as fake and professionally needless, redundant, and/or a categorical denial of their educational potential.[18] Contrasted to the shows that fail to play a social function, mock trials were often used as examples of the legitimate dissemination of the judicial image. In general, the imitational trials were alluded to briefly by the participants, but the smallest focus group discussed it thoroughly and passionately:

> Judge Charlie: We do mock trials involving kids.

[16] Jonas Nekrasius, *Teismas Eina* [All Rise] (Mintis, 1983) 33.
[17] Peter Goodrich, *Advanced Introduction to Law and Literature* (Edward Elgar Publishing, 2021) 103.
[18] As discussed in Chapter 5.

Judge Reed: Yeah, by the way Charlie here has some experience.

Judge Charlie: Yeah, a real proceeding. We have organised the whole real proceeding. So, 13-14-year-old kids come over. They actually spend time together in a real court.

Here, in the courthouse?

Judge Reed: In our [courthouse], yes. To celebrate the Children's Advocacy Day. We did organise it last year, yes.

Judge Charlie: [They] come to us. Everyone is assigned a role. There are prosecutors, advocates, witnesses, aggrieved and accused. We carry on our proceeding.

Judge Reed: There was a special script according to which they robbed each other or something else they did.

Judge Charlie: The script, yeah yeah yeah. Indeed, they assault, rob, and indeed the real proceeding is organised.

Judge Charlie: And everybody stands when we announce a verdict. Everyone listens while standing. We announce the real judgement, explain the order of appeal, I mean. And we ask whether they have understood. So there.[19]

This conversation was a spontaneous response to Judge Gill's rejection of *Culture Court* as a mock trial when she was making sense of the show's genre.[20] In contrast to Judge Gill, Judge Charlie and Judge Reed have already made meaning of the distorting function of *Culture Court*, and in this conversation they supplied mutual aid to each other to recollect and assign meaning to the memory of a mock trial as a means against the distorting effects of *Culture Court.* It is interesting to notice the dynamics of the participants' investment in this meaning making: while Judge Reed provides the details about an occasion and nature of the mock trial, Judge Charlie feels called upon to defend the values and virtues of judicial authority. I suggest this, because of the strong emphasis

[19] Focus Group Discussion 2 (Lithuania 2019) 9-10.
[20] See Chapter 5 for this analysis.

on the aspect of the 'real' process, the 'real' court, and the 'real' verdict despite the roles and certain scripts being assigned to the kids. The acts of announcement, explanation of the order of appeal, and ensuring the actual comprehension resonates with this group's previous passionate critique of the unclear and uncertain verdict in *Culture Court*.[21] This interplay between 'real' and play in Judge Charlie's comments indicates that despite passionately defending the normative 'real', she is implicitly accepting expansion of the meaning of legal procedure to include impressions made by the mock trials as an aspect of judging. In this active collective construction, expectations of a judicial role are shaped through the relations and movement of the bodies in a court procedure which enfolds the normative and theatrical, the serious and the play.

Movement of bodies is also an important aspect in Judge Jo's authority shaped against the popular culture. After determining a purpose of the producers 'to show more humanity'[22] and linking this aim with the tendencies of courts to become more open for the public, Judge Jo problematised art exhibitions[23] in the courts as a possible instance of going from one extreme to the other. Acknowledging the possibility of having outdated views, Judge Jo argues against art exhibitions in courts as not compatible with the litigants' mindset in this situation. He proposes a notion of legal culture as a more

[21] See Chapter 5 for this analysis.
[22] Interview with Judge Jo (Lithuania 2019) 3.
[23] Through correspondence with the Lithuanian National Court Administration, I got information of non-biding nature that 'there is no legal regulation regarding organisation of exhibitions in courts. The exhibitions in courts are organised by the rules stipulated by each court individually. For example, according to the established practice, a written or an oral agreement between an exhibitinh author and a court manager is made' (email correspondence 10 May 2022). In practice, various art exhibitions have been held in Lithuanian courts, see for example *A retrospective exhibition of D. Dolinin's photographs will take place in the court* <https://www.teismai.lt/lt/naujienos/teismu-sistemos-naujienos/teisme-retrospektyvine-d.-dolinino-fotografiju-paroda/2918>; *An exhibition of Rolandis Vytis caricatures has started in the Vilnius City District Court* <https://vilniausmiesto.teismas.lt/naujienos/teisme-vyksta-nauja-paroda/216>; *The spaces of Šiauliai District Court were decorated with paintings by S. Jankauskas* <https://siauliu.teismai.lt/naujienos/siauliu-apylinkes-teismo-erdves-papuose-s.-jankausko-tapybos-darbai/368>. Importance of the artwork is also visible on the website of the High Court of Australia: <https://www.hcourt.gov.au/artworks>.

appropriate approach, explaining that 'legal culture entails that people would be engaged in legal process more comprehensibly'.[24] Further explaining legal culture, Judge Jo said:

> Uh but, well, exactly the preparation and particularly the priming of man that, no matter what, you must behave according to what you are required to be in such a situation, in such an institution. For there are people who do not even know that when a judge enters, it is necessary to stand up. That is, I had to use such an expression that standing up is not for the judge who came in, but because there are other symbols of the State – the flag, I mean coat of arms and so on.[25]

Juxtaposed to Mulcahy's (2011) concept of standing up for a judge as 'a simple routine activity which reflects that members of the public are not totally passive in the modern trial',[26] the circumstances of Judge Jo's setting highlight concern with showing respect to the special institution of the court by unconditional processual obedience. While Judge Jo notices participants' distress in court because, instead of 'a comfort and tranquillity',[27] they feel 'tension and anxiety',[28] it is something natural and habitual. The legal culture is seen as the means for orderly, professional and effective legal process by priming participants for it. After narrowing his focus on legal culture as applicable to the disobeying litigants, Judge Jo noticed an absence of a gavel in Lithuanian courts, with the exception of the Lithuanian Constitutional Court, seeing it as helpful for protecting the process from any disturbances.[29] This example illustrates how experiences of popular culture, shaped by rational reason as a form of legal method, inform Judge Jo's reference to a clear division not only between law and art but also between law and humans.

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[24] Interview with Judge Jo (Lithuania 2019) 4.
[25] Interview with Judge Jo (Lithuania 2019) 4.
[26] Linda Mulcahy, *Legal Architecture: Justice, Due Process and the Place of Law* (Taylor & Francis Group, 2011) 86.
[27] Interview with Judge Jo (Lithuania 2019) 3.
[28] Interview with Judge Jo (Lithuania 2019) 4.
[29] See Chapter 5 for the analysis of a role of a gavel in shaping judicial authority.

These politics of division stand in stark contrast to the previously discussed enfolding of real and fiction in the focus group discussion. This illustrates negotiation of changes in transitioning legality as embrace or challenge to 'high level of purely procedural formalism'[30] and 'the instrumentalist approach to law'[31].

Indeed, challenges of negotiation between different judicial approaches and traditions became visible in the focus group when judges were prompted to rethink an image of a judge. Springing from a criticism about using judicial symbols in popular culture and doubt about the official approval for making any court show, this discussion developed:

> Judge Dallas: Well, in other countries, I think, it is an often pursued [practice].
>
> Judge Charlie: Well now there is one. Not with judges but on National Court's Administration's [website] there is one about judicial proceeding. There is something on National Court's Administration's [website] but those are animated cartoons.
>
> Judge Reed: Well, uh educational in nature.
>
> Judge Charlie: Educational in nature, showing the designated seating.
>
> Judge Reed: Here *YouTube* clips might be sufficient, like those 'how to vote?', you know? So here the same – 'how to behave in the court'.

[30] Rafal Manko, 'Survival of the Socialist Legal Tradition? A Polish Perspective' (2013) 4 *Comparative Law Review* 6. These studies concern Polish judiciary, but some Lithuanian studies also start theorising the ways of the survival of the Soviet consciousness in post-Soviet society, as well as legal tradition. See for example, William D Meyer, 'Facing the Post-Communist Reality: Lawyers in Private Practice in Central and Eastern Europe and the Republics of the Former Soviet Union' (1994) 26 *Law and Policy in International Business* 1046; cited in Christopher R Kelley, and Julija Kirsiene, 'The Role of ethics in legal education of Post-Soviet countries' (2015) 1(8) *Baltic Journal of Law & Politics* 143.

[31] Alan Uzelac, 'Survival of the third legal tradition?' (2010) 49 *Supreme Court Law Review* 379. In line with this theoratisation, judicial independence as a symptomatic problem featured in several accounts. Concerns with independence were expressed by Judge Finley, Judge Rain, Judge Kai, Judge Ride, and are further discussed in Chapters 6 and 7.

> Judge Charlie: Well, something like that in order that a person would not be scared. For example, what the courtroom looks like, designated seating areas, designated witness place, what to sign. Something like that.[32]

In this active negotiation of the image of courts, the participants reveal the important role played by National Courts' Administration as the independent institution with an authority to safeguard 'the efficiency of the court system, its government and organisation of work as well as the independence of judges and autonomy of courts.'[33] Together with Judge Jo's politics of division, this participants' concern with educating the public about legal processual behaviour could illustrate how an instrumental approach to judging and expectations of processual obedience can transition to the digital space. However, Cserne (2020) warns that:

> The issue of judicial formalism easily becomes a battleground for fierce controversies about collective political identity. The debate between the two narratives is not merely symptomatic. It may also become counter-productive insofar as it reproduces and reinforces what could be called a collective inferiority complex.[34]

Indeed, the interchange between Judge Dallas and Judge Charlie reveals their conflicting worldviews towards the challenges of modernisation. Judge Charlie's reference of a virtual courtroom on the National Courts' Administration's website is to the existing practices as self-sufficient. It responds to Judge Dallas' concern about the possible lack of progress in comparison with other countries. But it also helps noticing how the judges' embracement of indoctrination of procedural obedience and resistance to 'entertainment

[32] Focus Group Discussion 1 (Lithuania 2019)16.
[33] National Courts Administration (Lithuania) < https://www.teismai.lt/en> .
[34] Péter Cserne, 'Discourses on Judicial Formalism in Central and Eastern Europe: Symptom of an Inferiority Complex?' (2020) 28(6) *European Review* 888.

justice'[35] highlights the possibility of losing humanity or a 'sense of justice'[36] to the technicality of the process.[37]

(b) Questioning the Operation of Trust

In the referential statements, along with the already discussed mock trials, the Judges also mentioned other means of legal education. After realising that court publicity measures do not reach such large audiences like television, the participants problematised the ambiguity of legitimation through trust. For example, in the smallest focus group the following discussion about an open court procedure developed:

> Judge Gill: [ST]+*Court proceedings are public.*
>
> Judge Reed: Yeah, all is public in our [place], [they] can watch. If they have closed in their [place] then...
>
> Judge Dallas: Indeed, they can. Exactly, our [court] procedure is open.
>
> Judge Charlie: Yeah, and it is the best information [laughing].
>
> Judge Dallas: Except in practice, of course, nobody perhaps uh. In my three year practice, for example, I had no opportunity to encounter a stranger who would attend just to watch [a court procedure]. Most often those [ST] *are either an associate solicitor who can ...*
>
> Judge Charlie: [ST]+*You know, they watch our* [procedure].
>
> Judge Reed: [ST]+*They come to our* [procedure]. Perhaps they do not frequent your civil [cases], [they] frequent us though [laughing].
>
> Judge Dallas: Perhaps [they come] not so much to our civil [cases] [laughing]. Perhaps criminal [cases] are more interesting, yeah.

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[35] Žygintas Pečiulis, 'TV Media in the Soviet System: The Collision of Modernity and Restrictions' (2020) 1(31) *Filosofija. Sociologija* [*Philosophy. Sociology*] 88.

[36] Paul Ricoeur, *Oneself as Another* (K. Blamey trans, University of Chicago Press, [1990] 1992) 262 (italics in the original), cited in Gaakeer, above n 12, 110.

[37] Issues of legal instrumentalism are discussed in Chapter 5.

Judge Charlie: So, it is not interesting in your civil [cases] [laughing].

Judge Reed: They visit us [laughing].

Judge Charlie: They visit us, yeah, to sit [laughing]. [38]

Attendance in court hearings did not appear in other participants' conversations, but in this focus group it is a critical point. Participants' use of the personal pronouns indicate that they are reshaping identity through the experiences of this encounter. The identity is reshaped in difference: note how Judge Reed uses a dichotomy *us* versus *them* to defend the existing measures to educate the public as helpful and effective, and a jolly relief is observable when the participants acknowledge that a court procedure is not closed but open for the public. Though Judge Dallas observes that nobody comes to watch court procedure despite an opportunity to do so, joy is brought to the negotiation by discussing different attendance trends defined by the case type. Note how a more frequent attendance of criminal hearings is justified by accepting without debate that they are more interesting. However, simultaneously it is acknowledged that public hearings are ineffectual due to the lack of spectator attendance.

Legitimation of judicial authority through trust in the context of media was problematised in the largest focus group as well. After a critical discussion about a *Court* judge's unethical behaviour and intentions of the producers, this discussion developed:

Judge Rain: [ST]+ *With the use of images* it is broadcasted to the whole society that the procedure is carried out this way. When you know that only a small part of the society actually gets to the courts, well, participates in the court cases. And the vast majority ... do not have any connections to the cases or anything. And afterwards, say, those public surveys, trust indexes are measured. Here was an audit completed by a request of the Judicial Council where are the roots of distrust hidden.

[38] Focus Group Discussion 1 (Lithuania 2019) 17.

Eventualy, it become clear that mainly distrust those who have not participated in a court procedure in their life.

Judge Andy: [ST]+ *Have not been* ...

Judge Greer: [ST]+ *Yeah* ...

Judge Rain: Because it is created by a background of cheap information.

Judge Andy: Again.

Judge Brook: But my intention would be that they should portray realisticly and errorless in the shows, or documentaries, and even movies. Why? Because then the educative mission is fulfilled. Just look, suficiently educated people sometimes ask me when in a movie a prosecutor does something not correct. They say: 'Is it really like that at your [procedure]?' I assumed that not. I say, 'You are right, not like that'. Do you understand? Therefore, it is very important to show a realistic fabula even in the programmes.

Judge Andy: [ST] *It would not be* interesting to watch.

Judge Brook: Let's leave it to the comedy, that genre.

Judge Andy: [ST]+ *For* a *stand-up comedy.*[39]

In Judge Rain's understanding, distrust is assigned only to those who do not attend the court. This way, a problematisation of trust becomes entangled within the competing audiences, but also prompts an awareness of the diversity of the audiences.[40] Interestingly, Judge Brook's desire of the total control of the judicial image is embedded in a private setting. However, in contrast to the prieviously discussed interaction, here the generation of interest as a function of judicial authority is contested. This reveals a

[39] Focus Group Discussion 2 (Lithuania 2019) 9.
[40] For the role of the audience in the making of judicial authority see Leslie J Moran, Beverley Skeggs, and Ruth Herz, 'Ruth Herz Judge Playing Judge Ruth Herz: Reflections on the Performance of Judicial Authority' (2010) 14 *Law Text Culture* 198-219.

negotiation of the challenges of changing legality on the historical tension between closed and open courts.

Negotiation of challenges pertaining to the increased visibility and resistance to it manifested in the smallest group discussion.[41] By further developing implications of an open court procedure, participants' interactions moved to the tension between a private and a public:

> Judge Gill: Actually, there is no opacity, and uh I don't know when a court has been so open as it is now.
>
> Judge Reed: On the other hand, there are other nuances. For us education is good, now we talk about education. But try putting yourself in court partcipant' s shoes when your case is on trial and twenty people attend. Uh, and some personal circumstances are considered, especially in criminal cases in connection with the interpersonal relationships, family relationships, private life of a person [sighs].
>
> Judge Gill: There is a possibility [ST]+*for those cases uh a procedure stipulates.*
>
> Judge Charlie: [ST]+*A procedure has started, yeah.*
>
> Judge Reed: Well, there is a possibility. But almost in every case, for example, domestic violence, they wash their dirty linen in the courtroom, so ...
>
> Judge Dallas: You see, [ST] *it is not a bother for some.*
>
> Judge Reed: [ST]+ *Other participants of the procedure* in regard that your issues will be shown publicly, that your neighbour will watch, or my acquaintance will see me. Perhaps it is not very well, I don't know.
>
> Judge Charlie: So it will never be so massive.
>
> Judge Dallas: Perhaps [it depends] [S] *on the participant*.
>
> Judge Reed: [ST] + *There should* be a consent of the participant.

[41] For the completely different turn of discussion on the same topic see Chapter 6, in particular a discussion about Italian case.

Judge Dallas: It depends on the participant himself. Others do not overemphasise. Look, they take part in filming for 24 hours and they do not overemphasise it, it is their everyday life. And if you ask them, perhaps they would give you that look ,Nothing wrong, even jollier [laughing].

Judge Gill: [ST]+ *In our times of facebook and exposition when everything is public*.

Judge Dallas: [ST]+ *Here for us* perhaps more preferable is a closed, and, it seems to me, for them everything is simpler.

Judge Charlie: Yes, yes. [42]

In the previous comments Judge Reed was excited that his cases are visited by spectators, therefore, it is surprising here how he raises concerns about privacy in a public hearing context. It is important to note, that Judge Gill problematised the openness question by providing new interpretive guidelines on the role of media and the rift between reality and what media says. Judge Gill becomes disenchanted with the educative mission in the context created by Judge Reed when he brought in a real broadcast perspective and by Judge Dallas' bringing a reality TV perspective. Despite Judge Gill's observation about the changing reality for all of us, Judge Dallas and Judge Reed persist on a dichotomy of *us* versus *them*. What emerges from this discussion then is a tension between real-life privacy versus a popular privacy but also the blurring of boundaries between a real and staged performance of judging.[43]

However, insights gained from the television show creator, Sage, allows the challenge of this dichotomy between private and public. In the interview, her reflections on the representation of judicial image on television were shaped through the journalistic

[42] Focus Group Discussion 1 (Lithuania 2019) 18.
[43] See Chapter 7 discussion about the implications of changing legality and legal self, and the role of popular culture in this process.

critiques of *Court*. Sage reframed the critique of *Court's* claims to reality as responsibilities for the judicial image making:

> [the Court's verdict] materialised as homogenously mine; maybe that is why people believed me... I adhered to all canons, first off all about demeanour of a judge, ethics. I haven't given interviews about my personal life. I haven't given interviews about my personal life.[44]

In this comment, a tension between publicity and the issue of trust, so passionately discussed by judges, is resolved by ownership of the verdict and adherence to the principles of ethics. By blurring reality and fiction in the creation of judicial image, Sage's comments shape fictional judicial authority as a public and yet private encounter:

> I got invited to the third audition in the Leningrad[45] drama school. So, of course, I have never been afraid of a stage. And also I enjoyed the filming, you know, the chamber environment of the filming. Once you find a person, the chamber environment is like a real court.[46]

Sage's emphasis on the chamber environment could be seen as an intimacy aspect in performance. Marcinkevičiūtė's (2011) study of the ways to embed performance into a current setting argues that 'a scenography [can be] made meaningful by the conditions determined by a chamber space: absence of a traditional border between an actor and the audience'.[47] In a study of acoustic experiences and their role in shaping cultural memory, Gaidamavičiūtė (2017) argues that a chamber arrangement aligns with a personal drama

[44] Interview with TV creator Sage (Lithuania, 2019) 10, 13-14.
[45] Since 1991 it is known as Saint Petersburg.
[46] Interview with TV creator Sage (Lithuania, 2019) 9.
[47] Ramunė Marcinkevičiūtė, 'Kontekstualizavimo „čia ir dabar" eksperimentai: M. Gorkio pjesės „Dugne" pastatymai Oslo National Theatret ir Vilniaus miesto teatre OKT ['Experiments of contextualization "here and now": productions of M. Gorky's play "The Lower Depths" at Oslo National Theatert and Vilnius City Theater OKT] (2011) 18(2) *Menotyra* 120.

that is felt intimately as an uncertainty and hesitation.[48] Interestingly, in the judges' focus group discussion, Judge Alex called to reshape the relationship with the participants through intimacy challenging an ideal of a dispassionate judge.[49]

It is important at this juncture to return to Judge Monti who also persistently resisted the diversification of the judicial image. Through the reflection on various practices of courts' communications she created the possibility to notice how increasing the visibility of judicial image in a mode of a court procedure obscures the responsibility of the judicial role. Judge Monti proudly shared the international recognition of a Lithuanian virtual courtroom project[50] by contextualising it with the concerns of low public literacy, yet with a strong rejection of any legal fiction as the backdrop:

> And by the way, in the last General Assembly of the European Judicial Councils Network we won, well, a prize for us being socially active courts in Lithuania, for we have a courtroom shown on the Internet, don't we? You can click: 'Where do I go if I am a plaintiff or a defendant, what do I do'. Uh, through this we send a message to people, well the order of talking and standing.[51]

This passionate evaluation of a non-fiction form of a digital court procedure is similar to Judge Charlie's embrace of the mock trials in the focus group's discussion. But their further construction of meaning significantly differs. Instead of enfolding the serious with the play like Judge Charlie did, Judge Monti develops an awareness of a missing responsibility in this image:

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[48] Rūta Gaidamavičiūtė, 'Giedriaus Kuprevičiaus baletas „Čiurlionis". Vaizduotės vaidmuo formuojant kultūrinę atmintį' ['Ballet "Čiurlionis" by Giedrius Kuprevičius. The role of imagination in the formation of cultural memory'] (2017)24(3) *Menotyra* 233

[49] See Chapter 7.

[50] http://sale.teismai.lt/en/ It is the same virtual courtroom that Judge Charlie alluded to in the discussion.

[51] Interview with Judge Monti (Lithuania, 2019) 6.

> But we really do not give it, we do not show how the court makes that decision. It is not there; it is not there. Because it is not enough 'You should talk here', 'You should say this', 'You should do this' and then 'I decide'. If this is the case, it is very simplified, and this is not true.[52]

Judge Monti *notices*[53] that for the purpose of authentic representation of a real court, something is lacking in the virtual courtroom. This noticing was enabled by the meaning made earlier through her critique of the shows. Switching from the conception of a virtual courtroom as an award to the conception of a virtual courtroom as a tool to educate the public about the court procedure reveals how Judge Monti instigates the feeling of insufficiency. As she uses the notion of 'decision' which refers to the invisibility of responsibility[54] in a formal process and this is not acceptable anymore. The importance of the embodied experience of a trial in Judge Monti's meaning making emerges through reality judging, and this example clearly shows how she created a rupture which enabled noticing what was unnoticed before. This is what Sherwin (2011) calls entering 'a liminal state, betwixt and between the familiar and the strange, the conventional and the extraordinary.'[55] In cultural legal studies, noticing a gap in law creates an opportunity 'to transform or animate questions of law and justice.'[56] However, Judge Monti was not able

[52] Interview with Judge Monti (Lithuania, 2019) 6.
[53] I borrow the notion of *noticing* from Marett Leiboff's theatrical jurisprudence: 'In its Kantian ideal, law is expected to function in isolation and absent the self. Performance and the theatrical could not think more differently, creating conditions that enable bodily responses to engender responsiveness that affords the possibility of *noticing*… the effects and consequences of law' Marett Leiboff, 'Challenging the Legal Self through Performance' in Simon Stern, Maksymilian Del Mar & Bernadette Meyler (eds), *The Oxford Handbook of Law and Humanities* (Online Publication, 2020) 317.
[54] Containing critique of fictional judges' authoritative decision making, the following referential statement explains Judge Monti's notion of 'decision': 'I believe that the judge who has decided to go down that path, they know what their job is, what their mission is and how heavy the burden they actually carry. And the responsibility to make the decision not through their 'I' but through the criteria of reasonableness, through the social principles, it is not easy.' Interview with Judge Monti (Lithuania, 2019) 6.
[55] Sherwin, Visualizing Law, above n 3, 33.
[56] Leiboff and Sharp, above n 13, 6.

'to redeem … what has been visibly reconstructed'[57] despite creating a theatrical encounter 'where law in the form of word disintegrated in the face of bodily and visceral engagement.'[58] The problem is that Judge Monti, like other Lithuanian judges, is required to deny her body to comply with a requirement of impartiality which plays an important part in shaping a role of a judge.

2 *Negotiating the Real*

(a) Tensions Between the Judicial Role and the Body

Another major theme emerging from the referential statements is the tensions shaping the relationship between the judicial body and the judicial role. For Lithuanian judges 'a skill to distance from the participants of the court procedure and one's own beliefs, opinions and feelings'[59] is seen as 'a very important condition to judicial professionalism'.[60] The belief of disembodied professionalism was an important aspect for Judge Monti as she shaped the expectations of her own role in response to *Court* and *Culture Court*:

> This [television judges' expression] 'I am this, I am that' is strong. But we know that, *alas*, it cannot be. Although a judge's decision is prepared according to a personal inner conviction but certainly it is not so personal.[61]

As Judge Monti commutes from a story to life, she challenges a subjectivity of the character and moves to talk about the role of a judge. On the one hand she reinforces a determined role of a professional judge administering the state law. But the distancing from this role through the use of impersonal pronouns also speaks of an embodied

[57] Sherwin, Visualizing Law, above n 3, 33; Marett Leiboff, *Towards a theatrical jurisprudence* (Routledge, 2019) 37.
[58] Marett Leiboff, 'Law, Muteness and the Theatrical' (2010) 14 *Law Text Culture* 390..
[59] Žaneta Navickienė, Darius Žiemelis, 'The Dimensions of Judicial Profession in Lithuania: Qualification, Competence, and Personal Qualities' (2015) 97 Teisė [Law] 199.
[60] Ibid.
[61] Interview with Judge Echo (Lithuania 2019) 3.

commitment to a disavowal of the body,[62] yet with regret. The normative pressure on the judicial self is visible in this comment:

> A departure from the legal issues, philosophical contemplations … cannot possibly happen. I know because I chaired a court for five years, and instantly there would be a disqualification or other consequences. A judge should not, cannot do it because then you can be partial. Maybe you will not feel it inside but you will appear so for the litigants. [63]

In this comment, Judge Monti's movement reverses: after talking about the role she turns to the self as is indicated by her use of a personal pronoun *you*. And then is a split between the feeling self and the appearing self as if detached from the material body. Similar self-doubt underpins Judge Echo's care about her input in the research:

> Don't thank me too much, I found it quite interesting myself. But haven't I disappointed you; perhaps you expected some insights? [64]

This is equally evident in the following comments by TV show creator Tae, in which she attempted to dismiss as nonsense her imagined case that would not qualify for the real court hearing:

> Tae: Well, I don't know, here is a complete fantasy but just like an example [ST]+*of some sort.*
> Researcher: [ST] *Yes yes yes*.
> Tae: It seems to me that I have been talking nonsense again [laughing].
> Researcher: Everything is going to be fine [whispering].
> Tae: If you say so [whispering] [laughing].[65]

However, the clearest politics of denial of the body become visible in Judge Kai's expectations of the role:

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[62] Marett Leiboff, 'Towards a jurisprudence of the embodied mind - Sarah Lund, Forbrydelsen and the mindful body' (2015) 2 (6 - Special Issue) *Nordic Journal of Law and Social Research* 87.
[63] Interview with Judge Monti (Lithuania 2019) 3.
[64] Interview with Judge Echo (Lithuania 2019) 6.
[65] Interview with TV creator Tae (Lithuania, 2019) 7.

> A judge has to listen to one party, to hear the other party, provide opportunity for both parties to ask questions … allow both parties to discuss, sometimes even to quarrel. But certainly [a judge] does not uh succumb to emotions … A judge has no right uh to act and show their emotions.[66]

In this comment, impersonal pronouns are used to explain judging as an impartial and emotionless listening practice. The roles are clearly divided and behaviour scripted yet Judge Kai strongly objects to judicial acting. It is when Judge Kai reiterates the importance of an absent right to emotion in the next comment, that it becomes visible that acting is demanded of the judicial self, after all:

> You must be, remain calm, precise, comprehensible. And from your emotions a person should not be able to tell if you are on someone's side. Even if you are listening uh, you just don't have a right that a person would feel [your partiality].[67]

Together, the articulated manifestations of the tensions between the judicial role and body in these comments show a role of body politics in the facilitation of legal change in the post-Soviet legality, as well as the use of popular culture in construction of these politics. I suggest that aspirations to conform to the demands of a professional judge not only reproduce a detached rule-bound body[68] but also nurture a feeling of inadequacy that has a potential to feed the 'inferiority complex'.[69] Negotiation of these politics through popular culture is further evident in the next section where I demonstrate the ways that a critique of reality judging serves to open the way for a reflection on body politics.

[66] Interview with Judge Kai (Lithuania, 2019) 3.
[67] Interview with Judge Kai (Lithuania, 2019) 3.
[68] For an insightful study of the interlinking aspects of Soviet regime and Weberian bureaucratic order see Alexandra Elizabeth Godfrey Ashbourne, 'Lithuania: The Rebirth of a Nation, 1991-1994' (ProQuest Dissertations Publishing, 1997) 66.
[69] Péter Cserne, 'Discourses on Judicial Formalism in Central and Eastern Europe: Symptom of an Inferiority Complex?' (2020) 28(6) *European Review* 888.

(b) Negotiation of Body Politics

Several participants showed an awareness of the importance of body language in a changing post-Soviet legality. For example, Judge Brook's comment below illustrates negotiation of tensions between the role and judicial body as he embraces the politics of legal change. In a focus group discussion, Judge Brook's main concern was with a lost respect for the courts, and he proposed a less formal procedure as a condition to gain that respect. After Judge Nev's critical statement on the problem of using judicial symbols in the reality judging programmes, Judge Brook interrupted to share a memory about training, and obtained awareness about impressions made by a responding bodily authority:

> Judge Brook: [ST] *Perhaps you know* what we do not have. Perhaps you know about a training organised in other countries, even in our neighbourhood, in Poland. When uh a case is possibly unreal but it is heard, and afterwards a judge should announce a verdict, a decision or a judgment. The whole procedure is videotaped, and afterwards he looks at himself and analyses. Unbelievable moments. Turns out, we Judge Brook, sit with a hand like this [demonstrates].
>
> [Laughter]
>
> Judge Brook: He and his facial expression when a witness speaks. And all this is important. Turns out, there are no small details here.
>
> [Laughter]
>
> Judge Brook: But when I watched myself – Jesus Mary. Turns out, we even don't know sometimes. Hands and legs when we, say, dislike what a victim or an accused say. And how we respond – scary! I mean, I watched myself and I understood that it is unacceptable [laughing] at least externally [laughing].[70]

[70] Focus Group Discussion 2 (Lithuania, 2019) 7.

In this comment, the judicial self again is not aligned with the impressions made by his body as an external aspect of judicial authority. Judge Brook's struggle and interruption to get this message through suggests its importance. Note how he uses gestures to demonstrate his own faults of body language. What this shows is how through the experience of training, Judge Brook gained awareness about the unacceptability of the judging body which does not comply with the 'iconic logos'.[71] The story is self-deprecating, comic. No one participates by commenting but laughs. However, during this discussion Judge Greer's comment revealed a process of active construction of meaning using Judge Brook's story:

> Judge Greer: Uh [as Judge Brook said] 'when you sometimes look at yourself, you always see otherwise'. So uh actually here it is already connected with public communication. When you are training in public communication you are looking at yourself from aside. Uh well, it always evokes kind of a shock therapy at first. So maybe actually they [those who organise TV show *Court*] saw [court] procedure that way. But since I did not attend courts a lot in those days, uh however I once participated as a witness in a criminal case. So, well, so uh I was a little astounded with the whole [court] procedure, uh say, maybe with a sort of lack of order, and the absence of tinkering there. So the problem here is uh reflection as society sees the [court] procedure, well how they've seen it in 2001.[72]

In this comment, a meaning perceived from Judge Brook's self-reflection is enfolded with Judge Greer's own experiences of training in the collective attempt to make sense of *Court* producers' intentions. Judge Greer commutes from *Court's* story to assign meaning to his memories about visiting criminal trials in the past. An emerging net of meanings provides a salient reaffirmation of a shocking judicial image, wherever it is set in time

[71] Carolin Behrmann, 'Law, Visual Studies, and Image History' in Simon Stern, Maksymilian Del Mar, and Bernadette Meyler (eds), *The Oxford Handbook of Law and Humanities* (Oxford University Press, 2019) 40.
[72] Focus Group Discussion 2 (Lithuania, 2019) 8.

and place, that is contrary to the self-perceptions of the judges. Perhaps the liveliness of Judge Brook's performance prompted responsiveness in Judge Greer who at the end of the discussion challenged his own 'unruly body'.[73]

Conversely, in the individual interview, Judge Finley's awareness of the body politics is less enthusiastic. He dismissed reality judging as educative since it makes expected traits of judicial work invisible, such as responsibility.[74] In this context, he problematised the judicial role:

> Always a question arises, Why you write so uncomprehensibly? Or they tell, Let's popularise it; let's make it legible. But you are always in an ambigious situation: first, you want the parties to understand you, but second, you always imagine, [as] the judge of a court of first instance, that your piece of work will lay down on the coleagues' table. It would be weird if, while writing, I would not imagine how I will be understood by the Appelate court at first, and the Supreme Court if necessary.[75]

Use of personal pronouns indicates identity in tension shaped through the clashing demands of a simple language politics of open justice versus the demands of professionalism. The tension is seen as a result of the competing audiences: the case participants versus an appellate institution. This identification is determined in contrast to being a joker:

> If I use a language that is spoken in there, I get a minimum [reputation] of a coleague of low competence, small professionalism, who like some uh Pupų Dėdė (Uncle of Beans) sits in Laisvės avenue with an accordion and plays all those ditties. Even if it is correct, even if it is admired yet I don't want to be that jester, joker. I am in my profession.[76]

[73] Leiboff, 'Towards a jurisprudence of the embodied mind' above n 60, 83. This challenge is discussed in Chapter 5.
[74] Interview with Judge Finley (Lithuania, 2019) 6.
[75] Interview with Judge Finley (Lithuania, 2019) 6.
[76] Interview with Judge Finley (Lithuania, 2019) 6.

The critique of simple language here is used to identify with the profession, and to resist staging politics. *Pupų Dėdė* (Uncle of Beans) that Judge Finley compares to a jester, also known as Good Mood Uncle is a Lithuanian folk artist Algimantas Jasiulionis, who 'glorifies Lithuania',[77] and could be seen as a representative of the 'neotraditionalist' wave in the Lithuanian contemporary cultural scene.[78] With this acculturation, Judge Finley connects simple language with 'entertainment justice'[79] but it also serves as a springboard to reflect on the practices of the past:

> Say, there is uh some kind of a need in the society. Well, actually, when I started working, we had a sacred rule that the judges do not comment on their decisions, even prohibited. It was possible to get a disciplinary case. You have decided, all that you wanted to say is written down.[80]

This comment evokes debate about the balance between the media and a passive role of courts, where 'representatives of the judicial authority do not comment on their administration of justice'.[81] Framed as a shift from a sacred rule to the joker role, this comment draws attention to the disciplining of the judicial bodies and serves as a nodal point where attitudes towards the role in changing legality are shaped through fear. Indeed, awareness of disciplinary measures played out in the critique of reality judging

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[77] Ernestas Naprys, 'Ūpo Dėdei svarbiausia garsinti Lietuvą, o su mylimąja jis bendrauja platoniškai' [The most important thing for Good Mood Uncle is to glorify Lithuania, and he communicates with his beloved platonically] (2018 15min.lt) <https://www.15min.lt/naujiena/laisvalaikis/ivairenybes/upo-dedei-svarbiausia-garsinti-lietuva-o-su-mylimaja-jis-bendrauja-platoniskai-941-1013334>.

[78] 'A wave of a 'critical regionalism' or a 'neotraditionalism' in our contemporary arts is observable since around 2006–2007 as a (mostly younger generation's) reaction to a radical ‚contemporarity' (or interdisciplinarity) of an international trajectory in the last decade of the 20th century, a version of a contemporary ironic regionalism' Kęstutis Šapoka, 'And everything that is happening within me is also a part of the universe: several notes on Rolandas Rimkūnas' drawings' (2013) 70 *Acta Academiae artium Vilnensis. Dailė* 97.

[79] Pečiulis, 'TV Media in the Soviet System', above n 35, 88.

[80] Interview with Judge Finley (Lithuania, 2019) 6.

[81] Edita Žiobienė, 'Teisminės valdžios autoriteto apsauga žiniasklaidoje' [Protection of judicial authority in media] (2004) 57(49) Jurisprudencija 17.

by participants trained before Lithuania became a member of the EU, like Judges Nev, Brook, Alex, Andy, and Ride. In contrast, those who trained after Lithuania's accession to EU, like Judges Greer, Rain, Nole and participants of the smallest focus group did not demonstrate this fear.[82]

At the start of the interview, Judge Finley acknowledged the formality of Lithuanian procedure. My fieldwork notes indicate that this statement was quite expected, but I was surprised by the lack of evaluation of this fact. This shows my expectation for the formalism debate,[83] yet Judge Finley's nostalgia is a strategic critique of the legal change:

> Once they saw the ratings, once they saw how police [publicity campaigns] give effect and what they tell, our desire to go public emerged, of course, with the lack of money. Then the spokespersons [entered into the picture], and we come up against another [problem]: even those spokespersons do not know well how to comment on a decision. Then we proceed to the judge commenting on the own [verdict]. Now a judge comments, [the journalists] catch, then they train us. They train us how to do it, how to hold our hands, how to give an interview, how to choose [a position].[84]

Connected to the concern with reputation discussed earlier, this comment shows how Judge Finley employs a lens of consumerism for the critique of changing legality. However, Judge Finley's concern with reputation intertwines with longing for the past which persists and manifests in shaping an instrumental approach to the human relations. After relating restrictions of the past to the current bodily training, Judge Finley engages me as a researcher into his performance:

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[82] See Chapter 7 for further interrogation of responses to legal change through popular culture between differently trained participants.
[83] Péter Cserne, 'Discourses on Judicial Formalism in Central and Eastern Europe: Symptom of an Inferiority Complex?' (2020) 28(6) *European Review* 883.
[84] Interview with Judge Finley (Lithuania, 2019) 6.

> So I chose now: I sit with my back [exposed] to the sun, and you are in front of me with sun's rays shine upon you. Yes, that is the result of that training. How to choose a seat, how to feel comfortable during the conversation without any additional triggers. How there should be no adornments that a camera could zoom in to show how corrupt [a judge is], for example, like there is some necklace, how you are versed in. Or like everything always has to be ascetic. How to move.[85]

This comment is critical of the training in 'iconic logos'[86] but there is no tension between the judicial body and the role. Lithuanian research (Butkutė, 2008) encouraged a political narrative manipulation of senses to provide the audiences with affective pleasure, arguing for 'a rhetor [to] use a certain information in an attempt to affect minds of the listeners, to persuade using senses'.[87] In contrast to Judge Brook who used training in body language to reflect on his own allegedly unethical behaviour, Judge Finley used aesthetic knowledge for political critique and persuasion.

Similarly, aesthetic interest in the bodies manifested during the interview with Judge Jo. However, here a concern was not with a body language of the judicial self but of the litigants. He shared several insights about measures he had devised to prevent peoples' temptation to deceive a judge,[88] like 'watching litigant's body language to unmask … a desire to conceal or misrepresent the truth',[89] 'with the help of notaries using special staplers to staple the project so that it is already an integral part of the decision … to prevent frauds by participants'.[90]

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[85] Interview with Judge Finley (Lithuania, 2019) 6.
[86] Behrmann, 'Law, Visual Studies, and Image History', above n 66, 40.
[87] Laura Butkutė 'Stylistic and rhetorical resource of phraseological units in political discourse' (2008) 54(2(74)) *Lituanistica* 46.
[88] About the 'pursuit of material truth' as legacy of the Soviet Legal Tradition see Uzelac, above n 30, 370. Similarly, concerns with litigants' disorderly or fraudulent practices were expressed by Judge Nev and Judge Brook; they are discussed in the Chapter 6.
[89] Interview with Judge Jo (Lithuania, 2019) 5.
[90] Interview with Judge Jo (Lithuania, 2019) 6.

After arguing that the government is preventing a strong judiciary for the sake of political influence, Judge Ride also employed body language as an evaluation criterion in his critique of the then President of the Supreme Court:

> So well find me a country in the world where stationing of kids is allowed. I don't mind, his time would come too. But he, even looking at his body language, he feels like a kid among greybeards. And he is the commander. Well it is not allowed to vest authority this way, and automatically he is not independent, he doesn't have authority among colleagues solely because of the age difference.[91]

Judge Ride defines age and belonging to the community as the main criteria of authority. This example of implications of the inappropriate age served as evidence for an argument for the strong judiciary.

What these examples of referential statements showed is how in response to fictional television programmes, self-awareness of the judicial self in relation with various audiences was raised. While some of the examples manifested active self-reflection, others could be seen as capitalisation of the 'unruly body'[92] and resonates with the developments in 'craniology, physiognomy and anthropometry, claiming that we can learn to judge a person's character and disposition from the features of his face and outward appearance of his bodily characteristics'.[93] Sherwin (2007) argued, that:

> Aesthetics isolated from some grounding in the ethical offers no protection against, and might even invite, a sense of law as being rooted in no more than subjective preferences, or perhaps the will to power alone… The latter development is reminiscent of Walter

[91] Interview with Judge Ride (Lithuania, 2019)6.
[92] Leiboff, 'Towards a jurisprudence of the embodied mind' above n 60, 83.
[93] Gaakeer, above n 12, 77.

> Benjamin's invocation, using Carl Schmitt's phrase, of a perpetual state of emergency… It is what happens when the morality of law, or let us say the law of law, which is Justice, collapses into two closely interwoven agents: power and fear. The one thrives on the other.[94]

In light of this, in the final section I want to use referential statements to illustrate how this encounter provoked negotiation of power embedded in the actualities of judging politics.

(c) Popular Culture and Postcolonial Bodies

In making comparisons of the judiciary with other professions employed in the meaning making by Judge Finley, Judge Ride and Judge Monti, it is clear that they all contain two aspects: first, that professionalism should be the most visible quality of a judge; second, severe danger if this requirement is infringed. For example, Judge Ride consistently reiterated expectations of professionalism, and categorically rejected the educational potential of fiction by comparing it to an inaccurate teacher of arithmetic who makes 'reasoning with your child impossible'.[95] Similar renunciation is evident in Judge Finley's comment where, despite his earlier explanation how a pop format is fine for education about changing values, he clearly delimits formal procedure of a court from moral education:

> For talking about a situation of a court's institution, which has its order, rules, that for speaking your position there is a certain place, that you must strictly adhere to it …, so

[94] Richard K Sherwin, 'Law, Metaphysics, and the New Iconoclasm Passing On: Images' (2007) 11 *Law Text Culture* 71.
[95] Interview with Judge Ride (Lithuania, 2019) 4. In Chapter 5, participant's critical involvement with the programmes is discussed in detail.

> there is a complete unfamiliarity, a complete ignorance when a person encounters [a court] in reality. This is on the subject of educative potential of those shows [sights].[96]

After this critique of fiction's failure to embody institutional normativity, Judge Finley contrasted its educational potential with that of the jury:

> Currently they talk about the institution of jury. That would be the most useful. In my opinion, even candidate [for the President Election] Šimonytė has noted that discussions about law will increase if jurors are introduced. Legal education in the true sense of the word will increase. Because when a person actually will take part in a real process, then he will really see what the requirements are, and in what situations a judge is. [97]

Judge Finley recognises the importance of legal discussions here, but only the experience of a real process serves the aim of legal education in a real sense, which is shaped here as an awareness of judicial work, and empathy for the judges who face growing demands. This connects with Judge Finley's sarcastic observation that Lithuanian judges 'might be the fastest adjudicators in Europe but still election banners will scream "Faster!"'.[98]

Judge Monti also used a reference to the jury in her meaning making. While Judge Finley referenced the jury at the beginning of the interview,[99] Judge Monti mentioned it in the end[100]:

> Now we talk again about the institution of the jury, right. It seems it is election and a [new] wave of a need to revive. Because uh for the current president [Grybauskaitė], whose career is ending at last uh, at the start of her career it was on a wave. Because it was needed. I do not know, for some reason nobody has made it into law for ten years, though the courts always said, 'If you make it, we will work'. However, I worked in those

[96] Interview with Judge Finley (Lithuania, 2019) 3.
[97] Interview with Judge Finley (Lithuania, 2019) 3.
[98] Interview with Judge Finley (Lithuania, 2019) 3. For an excellent overview of Lithuania's effective justice see Julija Kiršienė, Edita Gruodytė, 'The Highest Rate of Public Trust in Judiciary in Twenty Years in Lithuania: Trend or Coincidence?' (2019) 19(1) *International and Comparative Law Review* 134.
[99] Interview with Judge Finley (Lithuania, 2019) 3.
[100] Interview with Judge Monti (Lithuania, 2019) 7.

> Soviet times … and I know what the jury in the court means, how to find [jury members]. They were paid to leave their work. Now, in private business, I do not know how it would be. Uh, which employer would allow to leave [from work] [laughing]. In current times, I cannot imagine how a decision would be made with the participation of a jury member. Hundred per cent of decisions are postponed in the complex cases.[101]

In this comment, Judge Monti entangles political conformity with the critique. While Judge Finley sees the jury as a tool for raising awareness about the challenges of judging, Judge Monti views it as a threat to judicial authority. In her discussion of the jury, Judge Monti problematised disappearing responsibility:

> At the time, the jury members and a judge would sit in the flesh together and a judge would write a decision with a pen … I really enjoy picking up the archival files. You touch them and you see a legal dissolution of a marriage, which is written in a certain handwriting.[102] Three signatures and all is clear to everyone. Now the motivation takes ten pages. I do not know when this must happen, what the judge must do to interpret the law for those people. And who will take responsibility for the decision that will not be made by a judge? What, he will have to write a separate opinion uh because he thinks otherwise, eh? That something could be possible in the certain categories of cases. I agree, with the right of advisory voice but certainly not the deciding vote because it is specific.[103]

Materiality of archival cases makes responsibility tangible; it becomes perceptible to the sense of touch, therefore comprehensible, real. Important actuality, which facilitated collective coherence in pursuit of justice in Soviet times, was appointment of the staff dependant on appointee. Sagatienė (2013) points out that:

> [i]n order to ensure the election of credible Soviet cadres as judges and the jury members, in the regulations the right to 'install', i.e. to nominate candidates, was granted only to party-based organizations …, and the right to register nominations – for local authorities

[101] Interview with Judge Monti (Lithuania, 2019) 7.
[102] Threadgold (1996) argues that 'hand writing as a technology … made possible the discursive construction of truth and knowledge in the first rational bureaucracies (monasteries)' Terry Threadgold, "Legal Practice in the Courts: Discourse, Gender and Ethics" (1996) 7 *Australian Journal of Law and Society* 50.
[103] Interview with Judge Monti (Lithuania, 2019) 7.

> … In fact, the Ministry of Justice selected the candidates for the election of judges and counsel… In the election of people's judges and jury members, the Soviet regime sought to show that the entire populace was in favour of socialist justice and, at the same time, of the socialist system, so that agitation in the press played a significant role in the run-up to the court elections. Soviet propaganda created the illusion that candidates for judges were elected by the people themselves.[104]

Given the importance which publicity plays in propaganda tactics, and when contrasted to the current extensive motivation, Judge Monti's nostalgic materiality points to the insufficiency of impressions. Just like in the earlier discussed Judge Monti's critique of fictional judges' authoritative decision-making that distorts an image of responsible decision-making, here emphasised is juries' inability to be responsible. She used an analogy conveying even deadly consequences:

> Well, I imagine a doctor. We come and start telecasting surgery. It is a profession, we get training, that is, certainly education. Then maybe in general we should change our legal system.[105] … Those people who want to play the public, elections and so on, they can posit but they should write very clearly how it will proceed and we will do it. Then perhaps would be possible to feel what the making of decision is. [106]

By comparing a live broadcast of surgery to adjudication as visible responsibility, Judge Monti creates a mood of mortal danger. Here incompetent practices of judging, similar to surgery, are life threatening, and judicial training and education act as fundamental pillars of the legal system.

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[104] Dovilė Sagatienė, 'The Restoration and Development af Soviet Courts in Lithuania in 1944–1956' (2013) *5*(1) *Socialinių mokslų studijos [Societal Studies]* 201. As Hazard (1962) pointed out, 'the Soviet legal procedure relies on two lay assessors in every type of case, both criminal and civil, to share with the judge the decision on matters both of fact and law. This is so in all of the Eastern European states that have adopted the Soviet legal system, and has been accepted even in Communist China'. John N Hazard, 'Furniture Arrangement as a Symbol of Judicial Roles' (1962) 19(2) *International Society for General Semantics* 182.

[105] Interview with Judge Monti (Lithuania, 2019), 7.

[106] Interview with Judge Monti (Lithuania, 2019), 7.

In the same manner, Judge Finley expressed his concern:

> [The fictional court programs] cannot be formers of legal practice. We understand perfectly well that a person cannot be not a specialist, regardless of whether they are observers, or participants of the special procedures, which the court is. I will neither touch [an electric] socket being electrician if I do not understand, nor I will participate as a professional in uh a surgery, nor I will teach from the start to the end crippling a child in a long process. [107]

While Judge Finley also uses analogies that convey a life-changing danger, here a source of threat is not the jury but popular culture. This shaping of uniqueness of function, in a context of other state branches and media, prompts awareness of a power struggle:

> Well, [judges] are like the others. Well, maybe not like the others, since neither the president, nor the prime minister, nor the government can administer justice. Well, of course the media can administer justice. But since, well, it took this function, just took it. But it is taken when someone hands it over. [They have] handed it. It has been handed. It slipped away. It slipped away somehow out of the context and the fourth estate became the first.[108]

In this comment, Judge Finley's despair about administrators of justice being deprived of their function is entangled with a bystander's position who blames a mysterious someone. Hopes and expectations for justice are given up. Taking into consideration that this interview like all the others was conducted in the backdrop of a recent, unprecedented, extremely controversial, and highly mediated judicial corruption scandal,[109] Judge Finley's juxtaposition uncovers a manifestation of a moral outrage over a shift in power hierarchies.

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[107] Interview with Judge Finley (Lithuania, 2019) 4.
[108] Interview with Judge Finley (Lithuania, 2019) 10.
[109] Reuters, *Lithuania arrests eight top judges in anti-corruption crackdown* (21 February 2019) <https://www.reuters.com/article/us-lithuania-corruption-idUSKCN1Q922O>.

I suggest that this sense of slipping authority he developed through a meaning-making process in response to *Court* and *Culture Court*. As discussed in the previous section of this chapter, following the thorough deliberation on political issues in a postcolonial unstable context, the meaning of this significant change Judge Finley constructed after noticing certain changes in current affairs. First, in politics of the audience of a judicial decision: how commenting on the decision turned from a cause for disciplinary hearing into judicial duty. Second, he noticed an imbalance in regulation of judicial and journalist ethics; and lastly, media's disguise of sensationalism under a mask of the duty of information.[110] Reflection on legal changes, embedded within fictional judging aesthetics, provoked this sense of lost authority because of the submissive role assumed by the participants. Nostalgia of imagined lost autonomy underpins the determination of professionalism through formal law. While Judge Monti was consistent that the real process is the only acceptable form for any real understanding of what constitutes a visible judiciary, Judge Finley and Judge Ride suggested alternatives for visualising Lithuanian judicial authority and underlined the importance of persons of influence in the public image of the judiciary. In spite of the different approaches, both meanings highlight ideological patterns of 'deeply rooted and long-term, sometimes traumatic issues of national and political identity'[111] and 'collective (political) identity'.[112] That is, they reveal their concern with autonomy, entangled with passive conformity of the mute postcolonial bodies. From a media and communication perspective, 'in the realm of

[110] Interview with Judge Finley (Lithuania, 2019) 6.
[111] Peter Cserne, 'Discourses on Judicial Formalism in Central and Eastern Europe: Symptom of an Inferiority Complex?' (2020) *European Review* 1–12. Also see Simon Featherstone, 'Postcolonialism and Popular Cultures' in Graham Huggan (ed), *The Oxford Handbook of Postcolonial Studies* (Oxford University Press, 2013) 386.
[112] Cserne, above n 95, 12.

images, we find our sense of self reflected back by another with whom we identify (who is paradoxically both self and other)'.[113]

Interestingly, none of these judges had issues with *Culture Court*, and even appreciated its professionalism,[114] pertinence of a discussed issue[115] or acting as a source of influence.[116] The postcolonial condition is complicit in accepting experiences of *Culture Court* as 'the self'[117] therefore intelligible[118] while rejecting *Court* as 'the other'.[119] In connection with the shows, Judge Finley seemed to despise *Court,* and even *refused* to talk about this show at all. However, towards the end of the interview, this participant revisited the critique of the *Court* judge's motives as being too short and unacceptable in real judging,[120] as he negotiated characteristics of a suitable publicly visible judge:

> [Publicly visible judge should be] charismatic, professional. Actually, not distorting in pursuit of a personal [interest] or some goals of the producers to get ratings. No bootlicking, no ordinary vox populist, no degrading. However, certainly it would be demonically hard to do that because of resistance to that. Or they say that now you already are spouting nonsense where no one is interested anymore. Because actually when you read an article it is horrible. Less so about the others, but when your case is described, and you see how many important issues are edited and omitted. And how everything is simplified. Not in vain we are learning, well, for example in a training centre, to write press releases about a case. It is demonically hard, actually.[121]

[113] Chandler and Munday, above n 2.
[114] Interview with Judge Ride (Lithuania, 2019) 2.
[115] Interview with Judge Monti (Lithuania, 2019) 2.
[116] Interview with Judge Finley (Lithuania, 2019) 2.
[117] Violeta Kelertas, 'Perceptions of the self and the other in Lithuanian postcolonial fiction' (1998) 72/2*World Literature Today* 253.
[118] Sherwin, 'Visualizing Law', above n 3, 21; Marett Leiboff, 'Cultural legal studies as law's extraversion' in Cassandra Sharp and Marett Leiboff (eds), *Cultural Legal Studies: Law's Popular Cultures and the Metamorphosis of Law* (Taylor & Francis Group, 2015) 36.
[119] Kelertas, above n 118.
[120] Interview with Judge Finley (Lithuania, 2019) 6.
[121] Interview with Judge Finley (Lithuania, 2019) 10.

In this comment, as Judge Finley reflects on challenges of PR training and judging practices, he reveals complex entanglements that shape publicity. Paralleling with consumerism and thus framing judicial PR training as a commodification of justice, Judge Finley draws a boundary to distinguish between ethical and unethical training practices, as he brings to light everyday details of transforming legality. In this light, judges themselves write to avoid distortions but they are trained into the distortion itself, and for Judge Finley it is demonically hard. Further, he evokes a combatable scene against the misuse of technologies:

> Certainly, now that copy-paste technologies exist, we fight against uh taking entire pieces of practice and then [transferring them to a decision]. Certainly, it is less significant in the first instance court. For us a fact, circumstances, motives are important. That [in a verdict] would not be mere party testimonies, descriptions and then the motives like hers in *Court*. It is emphasised in every training.[122]

Note how Judge Finley places a judge from a TV show context into the setting of judicial PR training and mundane tasks. Here *Court* is clearly used to make meaning. Judge Finley uses this meaning to distinguish ethical practices of judging from those unethical of *Court*. I suggest that it is used to discredit publicity in general, and that it reveals nostalgia of courts' autonomy. But in contrast to Judge Monti's concern with autonomy problematised through the reiteration of a disappearing responsibility, Judge Finley's concern is with balancing *interesting* with a personal authenticity in the publicity context.

But Leiboff (2019) points out that practised in this mode, law is without an awareness of its effects and consequences.[123] Here it likely draws an instrumental approach and conformity to political powers from the legacy of Soviet legality. With this chapter I

[122] Interview with Judge Finley (Lithuania, 2019) 10.
[123] Leiboff, above n 55, 57.

offered unique Soviet postcolonialism insights to juxtapose law staged through body politics to materiality. This way, a sense of urgency to save justice by saving the judiciary emerges but the question is what phenomenon emerges as justice through this encounter?

By comparing real judging to fictional, participants' critique highlighted concern with slipping authenticity, but my concern is how reality judging enables or undermines trust in law's ability to keep social order, and that is the focus of the next chapter.

C *Conclusion*

In this chapter, the analysis used participants' referential statements to demonstrate how, through involvement with the popular fictional judging, awareness of a need to protect the public judicial image in an unstable postcolonial Lithuanian context is provoked. Provocation of the encounter with *Court* and *Culture Court* prompts the participants to challenge a dispassionate ideal of a judge because:

> sensory disruption of the theatrical interferes with law's ontologies including a spectral normativity that has its origins in a deep hostility towards theatre, out of which legal antitheatricality was shaped.[124]

The insights emerging from the referential statements show various complications in judging in the democracy in flux. They illustrate negotiation of challenges faced by judges in such circumstances. As participants commute from critique of fictional judging to real-life experiences and memories, they reveal a developing awareness that the exposure to wider audiences brought by legal changes threaten autonomy of the institution. Moreover, embedded in these circumstances, legal change evokes a sense of shifting power hierarchies and the need to work on judicial genuineness. When a shift is understood as a

[124] Ibid 16.

lost appeal of the institution itself, the role of judge is 'aestheticised' accordingly, and tensions between judicial body and the role manifest. While the encounter prompts self-awareness, conformity to political powers is exposed. However, turning to the body to reveal dispersing responsibility in the digital reality, Judge Monti showed its importance through materiality that embodies responsibility of the one who makes the decision.

These findings have significant implications for the understanding of the problem of the Lithuanian judiciary. By reshaping lost respect and low trust issues into questions of responsibility and relevance, the problem of 'the failures and chronic systemic problems of justice system'[125] pleads for different approach. Notwithstanding the limited sample, this work offers valuable empirical insights into the complex entanglement of popular and institutional judging, in particular the transformative process of the judicial meaning making through popular culture and its role as training in humanity. The next chapter will look at the critical statements to explore the role of *Court* and *Culture Court* in enabling or undermining trust in law's ability to keep social order.

[125] Kiršienė and Gruodytė, 'The Highest Rate of Public Trust', above n 86, 143.

CHAPTER 5

THE CRITICAL REALM: SPACES AND BODIES

A *Introduction*

The purpose of this chapter is to explore the role of *Court* and *Culture Court* in the (trans)formation of the concept of judicial authority through the analysis of critical statements. Here I present the analysis of the major themes that I have developed from the participants' responses to *Court* and *Culture Court* coded as critical (Sharp, 2015; Liebes, Katz, 1993). These themes were clustered into genre evaluation, critique and appreciation of the story, characters, setting and props on the shows, as well as 'pragmatic criticism' of the role played by these shows on the public and their own perceptions. This allowed a comparison of the participants' responses both within and across groups.

The analysis of critical involvement will show negotiation of ethics, aesthetics, and politics of judging through experiences of an image of judicial authority as aesthetic construction. For the understanding of the court image, I draw on Goodrich's (2021) notion of an image as 'dissemination and change of meaning'[1] of 'judicial virtues and values'.[2]

My discussion of the participants' responses to the constructed reality in *Court* and *Culture Court* focuses on the genre. Machura (2009) argued that 'what makes the TV judge a prominent figure is the social function of the genre'.[3] There is potential of judge shows to function simultaneously as entertainment and as education for 'the public about

[1] Peter Goodrich, Advanced Introduction to Law and Literature (Edward Elgar Publishing, 2021) 98.
[2] Leslie J Moran, *Law, Judges and Visual Culture* (Routledge, 2020) 81.
[3] Stefan Machura, 'German Judge Shows: Migrating from the Courtroom to the TV Studio' in Michael Asimov (ed), *Lawyers in Your Living Room! Law on Television* (American Bar association, 2009) 326.

law and about rules for living peacefully together'.[4] I use a critical media studies approach to genres as 'based not only on the stylistic and substantive traits they share, but also on what they do (for audiences) – on the social action they perform in response to recurring situations.'[5]

Also, Wood (2018) stressed the importance of clarifying 'audiences' expectations of genre' when interrogating court representations because of the ability of these shows to 'enable real-world intensities to break through and even upturn legal frames via their televisual frames – whether that's through humour, emotion or anger'.[6] Scholars have demonstrated that courtroom television has the capacity to create liminal legal spaces by enacting 'legal consciousness' (Wood, 2018) and parasocial interaction (Annese, 2004; Moran, 2020) through the generation of intimacy (Moran, 2021). 'In technological societies … [m]ediated interactions do not work simply "as inspirers of apparent behaviors, but also and more slightly as prompters of those fears, desires and aspirations that enter to constitute the identity of the people …"'.[7]

However, Hill (2018) argues that hybrid formats are more productively approached as 'the imaginative spaces of storytelling'[8] rather than a genre. This is for the reason that by appealing to the everyday practices of the audiences this construction enables critical reflection on authenticity claims of these programmes. Using an example of *Master Chef*, Hill (2018) argues that reality programmes can prompt the viewer's critical engagement

[4] Ibid.
[5] Brian L Ott, Robert L Mack, *Critical Media Studies: An Introduction* (John Wiley & Sons, Incorporated, 2014) 121.
[6] Helen Wood, 'From Judge Judy to Judge Rinder and Judge Geordie: humour, emotion and 'televisual legal consciousness' (2018) 14 *International Journal of Law in Context* 593-4.
[7] Susanna Annese, Mediated Identity in the Parasocial Interaction of TV (2004) 4(4) *Identity* 386.
[8] Annette Hill, *Media Experiences: Engaging with Drama and Reality Television* (Taylor & Francis Group, 2018) 141.

'with claims of authenticity and the broader moral and social issues' because of their 'focus on practical skills as they relate to their everyday lives'.[9] Thus, where evaluation procedures and disciplinary measures ensure observance of the rules of conduct, the portrayal of a profession can create tension between authenticity and reality.

Debate on authenticity in commercial culture questions whether deception is all there is to achieve mediated authenticity,[10] or in addition to playing with the idea of authenticity, reality television also hints to informed viewers that it is a commercial technique.[11] This question is complicated within the framework of reality television because the combination of ordinariness and authenticity has a strong commercial potential (Hill, 2005, 2018; Moran, 2020) while attracting spectators with a 'focus on practical skills as they relate to their everyday lives'.[12] For this reason, reality judging challenges a division between the function of an image to serve either for dominant or counterculture through 'the image world and civic spectatorship'.[13]

As I will show in this chapter, this type of 'staging of reality that plays with the boundaries of fact and drama …'[14] is able to create dramatic experiences, such as farce, but also can attract to 'the imaginative spaces of storytelling'[15] for negotiation of 'mediated authenticity'[16] that 'instead reveals a search for the real'.[17] My focus on authenticity

[9] Hill, above n 8.
[10] Gunn Enli, Mediated Authenticity: How the Media Constructs Reality (Peter Lang, 2015) cited in Hill, above n 8, 140.
[11] Hill, above n 8, 140.
[12] Ibid 141.
[13] Robert Hariman, and John Louis Lucaites, 'Predicting the Present: Iconic Photographs and Public Culture in the Digital Media Environment' (2018) 20(4) *Journalism & communication monographs* 324.
[14] Hill, above n 8, 138.
[15] Ibid 141.
[16] Enli, above n 10.
[17] Sean Mulcahy, 'Singing the Law: The Musicality of Legal Performance' (2020) 24 *Law Text Culture* 492.

guides towards 'noticing'[18] how '[t]he technical comes to regulate ("control") the lifeworld …, reintegrating itself as an "authentic" part of the semantic, embodied situation in which humans find themselves'.[19]

This chapter begins with an overview of participants' making sense of constructed reality within *Court* and *Culture Court* in terms of genre. I will illustrate how participants share the educative expectations of both shows, and what virtues and values form the basis for participants to recognise or reject a social function of the genre. Then, I compare the responses shaped by participants' engagement with the constructed reality of *Court* and *Culture Court* that I discerned as a semantic genre and a semiotic staging genre approach.

B *Critique of the Image of Judicial Authority*

My concern is the relation between the viewing experiences and cultural shaping of judicial authority through popular culture in terms of formation of the encounter.

1 *Culture Court and the Production of Rhetoric*

Moran (2021) makes a very valid point that '[t]he location and organization of a display of pictures in a place shapes the viewing experience and thereby contributes to the meanings that viewing may generate.'[20] Therefore, before unpacking participants' engagement with the genre critique of *Court* and *Culture Court*, I start by reflecting on some of the participants' reactions to the clip demonstration.[21]

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[18] Marett Leiboff, 'Challenging the Legal Self through Performance' in Simon Stern, Maksymilian Del Mar & Bernadette Meyler (eds), *The Oxford Handbook of Law and Humanities* (Online Publication, 2020) 317.

[19] Leif Weatherby, 'Intermittent Legitimacy: Hans Blumenberg and Artificial Intelligence' (2022) 145 (49)1 *New German Critique* 32.

[20] Leslie J Moran, 'Researching the Visual Culture of Law and Legal Institutions: Some Reflections on Methodology' (2021) 48(S1) *Journal of law and society* S48.

[21] You can find a more detailed explanation in Chapter 3, and reflection on this practice in Chapter 7.

(a) Creating Encounter

I used my laptop to demonstrate two short extracts depicting an announcement of a verdict in *Court* and *Culture Court* to prompt the interviews and discussions with judges. Overall, the participants had no comments until I asked the first question. However, three interesting exceptions illustrate different approaches to viewing the clips. One such instance was Judge Echo's scrupulous note taking as she watched the clips, which she referred to as *sjuzet*[22] and too short to be suitable to answer the interview questions. Contrasting to such an engagement is Judge Jo's animated viewing of the clips. His interruptions during the viewing revealed not only his critical awareness of the construction but a willingness and desire to inform me about the constructed nature of the characters in the shows. Finally, I identified the third example of a distinct approach to watching the clips in the smallest focus group of judges. This is worth looking at more closely because it not only illustrates the in-group aesthetic negotiation politics, but it also helps explain my classification of the participants' genre approaches.

The dynamics of negotiation of viewing experiences provide insights about the intersection of the operation of aesthetic-watching politics and group-watching politics in responding to *Court* and *Culture Court*. This focus group was most attentive and lively in setting the scene for our discussion; Judge Dallas and Judge Charlie even made sure to adjust the position of the computer screen. In sharing her experiences of familiarity with the shows, Judge Charlie notes her decontextualised and atemporal memory of an image

[22] In Russian formalist narrative theory, 'three aspects of the story: fabula, sjuzet, and forma-roughly [correspond to] theme, discourse, and genre.' Jerome Bruner, 'Life as Narrative' (1987) (54)11 *Social Research* 696. See Chapter 7 where I discuss recurrent use of this notion by Judge Echo.

of '*a shooting gavel* and a woman dressed that way' [emphasis added].[23] The dramatic appeal also figures Judge Gill's recollection of her prior engagement with *Court:*

> The first show [Court] I've seen, I don't know, maybe two or three times. But not the entire [show]. Just when the television is on somewhere [laughing] and just well such a [dramatic] moment, but apart from this I did not watch, I did not observe. I concur with the colleague's opinion that perhaps at that time that was not my concern, so I did not watch.[24]

Compared to Judge Charlies' memory, note how this comment reveals Judge Gill's awareness of spatial and temporal aspects of her prior engagement with the television show. I also suggest that her embodied relational presence is indicated by her laughter in this comment. Since laughter accompanies marking of the television space, and agreement with the colleague's opinion attaches stigma to watching *Court*, laughter could be seen as an expression of discomfort and tension arising from these circumstances. This indicates that the viewing experience is shaped not only by spatial by also by relational facets.

All this illustrates how relational politics within a group, as well as a critical approach taken towards the construction of a TV show, shapes a style of engagement and cultural shaping of authority through it. Now I turn to the critique of genre.

(b) Responses to a Talk Show Genre

Genre of talk programmes on television provides a setting for parasocial interaction where regular individuals on screen provide interesting depictions of subjectivity for viewers at home. Through interpretation viewers incorporate on-screen images into their own

[23] Focus Group Discussion 1 (Lithuania, 2019) 1.
[24] Focus Group Discussion 1 (Lithuania, 2019) 1.

identity (Annese, 2004). In the first interview that I conducted in the fieldwork, Judge Finley had actively provided a detailed critical evaluation of both shows' social function even before clear and detailed questions were asked. This enthusiasm and critical expertise are surprisingly like the critical readers' activity in the audience research of *Dallas*.[25] While these two studies are almost thirty years apart, I suggest that such a move indicates critical awareness about the meaning production practices in the political communication context:

> I watched *Court* more often because it was brand new and interesting until the start of practice. Then, as a lawyer, I started resenting it because of surrogate presentation of a [court] procedure and cases. It reminded me of the detective movies where the formal side is forgotten, and for the sake of an artistic side the important issues are undermined … [In *Culture Court*] the experts having an opinion are present, a point of view … they are opinion makers ... [The name] does not make any difference whether it is any kind of a forum, or a meeting but they chose this form of *Culture Court.*[26]

In this comment, Judge Finley describes how his evaluation of *Court* transformed from interest to resentment once as lawyer he became aware about deception. As '[a] *prologue* [that] foreshadows what is to come'.[27] *Court* and detective movies are metamorphosed from the ordinary into a metaphor of a threat that is a shortcut to formation of meaning that does not require reflection.[28] In turn, *Culture Court,* (juxtaposed against *Court* – what he described as a 'surrogate'), becomes as real as the opinions of the experts. Though Judge Finley rejects *Culture Court's* role in promoting professional courts, he accepts the

[25] Tamar Liebes, and Elihu Katz, *The export of meaning: Cross-cultural readings of Dallas* (Polity Press, 1993) 119.
[26] Interview with Judge Finley (Lithuania, 2019) 2.
[27] Marett Leiboff, *Towards a theatrical jurisprudence* (Routledge, 2019) 29.
[28] Weatherby, above n 19, 33.

use of legal norms as a positive message for the public about the objectivity of judicial deliberation:

> It is a positive change [in portrayal]. [With] the [use of] legal sources and references I imagine results in trust. Because a person might not be able to comprehend everything, what they are saying there ... but he sees that this is not a subjective opinion.[29]

The word 'trust' in connection with *Culture Court* suggests this genre's distinction from something untrustworthy and false as was in *Court's* case. The juxtaposition of subjective opinion with the image of law 'cloaked with legitimacy'[30] shows Judge Finley's expectation for popular genre to generate realistic experience of normative legitimacy.

Disorientation (that I describe elsewhere as my own experience resulting from the fieldwork interactions[31]), in the context of a mediated socialisation in technological societies is seen as complicit in production of 'an identity in continuous construction, an identity with boundaries as fluid as the social resources on which it draws'.[32] Like rhetoric, television mediates reality, and 'talk shows function as a space of parasocial interaction'.[33]

Approaching *Culture Court* as a talk show, several judges appreciated the representation of professionalism in this show. Judge Finley used a discussion about euthanasia on *Culture Court* as an example of a useful theme and contrasted it to the fables[34] of *Court*. Similarly, Judge Monti also appreciated a theme discussed in *Culture Court* though firmly

[29] Interview with Judge Finley (Lithuania, 2019) 3.
[30] Montré D. Carodine, 'Trust is Something You've Gotta Earn, and It Takes Time' in Austin Sarat (ed) *Imagining Legality: Where Law Meets Popular Culture* (University of Alabama Press, 2011) 54.
[31] Aiste Janusiene, 'Judicial authority through the experiences of crisis' (2022) 13(1) *Jindal Global Law Review* 69-86.
[32] Annese, 'Mediated Identity', above n 7, 387.
[33] Ibid 371.
[34] Interview with Judge Finley (Lithuania, 2019) 7.

rejecting an educational potential of any fiction.[35] Judge Jo's making sense of *Culture Court* responded to the use of legal norms on the show: 'Here is an obvious attempt to familiarise public with the process, with some aspects of it. The legal language is used, mitigating circumstances sounded in the second episode [*Culture Court*] or aggravating circumstances.'[36]

In illustrating this clear line between 'real' law and fabrication motivated by educating the public in legal norms, I now turn to the ways in which the focus group discussions open the possibility for meaning-formation in a fusion space. As I have argued in the previous chapter, in response to the shows, participants discussed legitimate dissemination of the judicial image, with a widespread mentioning of mock trials. Here, I bring attention to the smallest focus group's discussion to illustrate how in their collective retelling of the experience normative and theatrical, the serious and the play enfold. This conversation inspired recognition of impressions made by the mock trials as an aspect of judging, therefore now it is important to unpack the trigger of this conversation, namely Judge Gill's interpretation and rejection of *Culture Court*'s genre. To make sense of the construction, this group responds to the visual and narrative features in *Culture Court*:

> Judge Dallas: Because for me [*Culture Court judge*] comes across more like a presenter.
> Judge Gill: Yeah, yeah, I agree [ST] *like a journalist*.
> Judge Charlie: [ST] *a television presenter*.
> ...
> Judge Reed: The second show, as colleagues observed, [is] a television show.
> Judge Dallas: You know, if comparing those two shows.[37]

[35] Interview with Judge Monti (Lithuania, 2019) 1.
[36] Interview with Judge Jo (Lithuania, 2019) 3.
[37] Focus Group Discussion 1 (Lithuania, 2019) 3.

In a collective interpretation, the participants respond to the character of a judge to actively make sense of *Culture Court's* genre as a television show. As the discussion progresses, the participants also respond to the studio environment and the character of a prosecutor:

> Judge Gill: The second visual image, *Culture Court* does not resemble a court at all because of a presenter, a judge-presenter.
>
> Judge Dallas: Also the studio.
>
> Judge Gill: Yes, the studio. A prosecutor or, as I understood, a person sitting like a prosecutor. He does not resemble a prosecutor because there are no signs. There is no dress, any signs that he is a prosecutor. Absolutely removed [from reality].[38] Like the colleagues said about the legal norms as [removed from reality]. Well, actually it comes across *as a talk show* [laughing] [ST].
>
> Judge Charlie: [ST] *show* [inaudible].
>
> Judge Gill: It made such an impression.[39]

This animated conversation reveals that the absence of legal symbols for Judge Gill makes evocation of a court impossible. As the discussion progressed, by actively interpreting the program's motives, Judge Gill rejected the symbol of a trial being used to convey the beliefs in moralisation on legal matters:

> I have not seen this program. Perhaps its essence is not to educate about the real court but give a moral evaluation in general. But if they talk now about the criminal codes then perhaps, they are not talking about morals [laughing]. Therefore, it made an impression of not being a legal program but more like a discussion of moral and social issues. If that is so, let's not talk about it as a mock trial. This is just a title.[40]

[38] The exact word that judges Gill uses is a metaphor meaning 'bypasses'. In the section 2 of this chapter, the analysis will return to interpretation of the role that this metaphor plays in sense making through popular culture.
[39] Focus Group Discussion 1 (Lithuania, 2019) 6.
[40] Focus Group Discussion 1 (Lithuania, 2019) 9.

It is this negotiation and rejection of *Culture Court's* function of legal education that prompted Judge Charlie's recollection of mock trials.[41] Once the participants became aware of the dissemination of unethical and unprofessional portrayals of a judge, they became critical of the *Culture Court's* genre:

> Judge Charlie: In the second show [they] created a completely negative image.
>
> Judge Dallas: It is the same if we create a [program] about gardening, I don't know.
>
> [Laughter]
>
> Judge Charlie: We watered but then the watering is not needed [ST] *like so* [laughing].
>
> Judge Dallas: [ST] *Yeah, it appears* unprofessional at all... but now a year ago it was possible to think somehow differently about [ST] *the show format*.
>
> Judge Charlie: [ST] *Well, I would* say the title should be 'Not Culture in Court' [laughing].[42]

The focus group's rejection of *Culture Court* as a part of a genre that serves a social function, and their difficulties to make sense of what genre it is, contrasts with Judge Finley's understanding of such a practice. Comparing the differences of the interplay between text and audience it becomes visible that Judges Finley can easily make sense of *Culture Court's* genre by linking legal norms, actualities of the issues discussed and the educative role of the experts. The focus group also approaches *Culture Court's* genre with educational expectations, but they reject its appeal because of the unfamiliar stylistic patterns and are unable to make sense either of its genre or its narrative. One of the reasons for rejecting the social function of *Culture Court* is the focus group's understanding of

[41] See Chapter 5.
[42] Focus Group Discussion 1 (Lithuania, 2019) 11.

judicial image as shaped through the legal symbols. This could be seen in the analysis of their responses to further aspects of *Court*, discussed next.

2 *Court and the Negotiation of Authenticity*

In Chapter 2, I discussed how jurisdictions are blurred due to the transfer of legal meanings (Villez, 2010, Machura 2005). A further point is that employment of excess emotions and symbols (Machura, 2009) can create encounters that 'complect'[43] reality and fiction (Wood, 2018). This movement complicates the potential of material staging of space to reveal contextual meaning of the judicial role in various jurisdictions as observed by Hazard (1962) in his study of the operation of unwritten law.[44] While the potential of culture to critique law and vice versa is well researched, it is not the case in the Lithuanian context. By comparing reactions and responses of the judges and creators to the symbols of judicial authority, I suggest that the symbols play a role of 'an artifact [that] is "relational" because it presents […] dialectic of transparency and obscurity in the medium of symbols'.[45]

My focus is on the gavel, the courtroom, and the dress as the points of tension based on their importance in both law and culture. For example, according to Lithuanian scholarship (Kiršienė, and Gruodytė, 2019), '[t]he unique traits of visual judicial transparency expose the myth of legality and its typical judicial symbols that imply

[43] Marett Leiboff and Cassandra Sharp, 'Cultural legal studies and law's popular cultures' in Cassandra Sharp and Marett Leiboff (eds), *Cultural Legal Studies: Law's Popular Cultures and the Metamorphosis of Law* (Taylor & Francis Group, 2015) 38.
[44] A first attempt to move in this direction has appeared in Sybille Bedford's The Faces of Justice: A Travellers Report (New York, 1961). John N Hazard, 'Furniture Arrangement as a Symbol of Judicial Roles' (1962) 19(2) *International Society for General Semantics188. See Moran (2020)* for the helpful overview of research into common law staging.
[45] Weatherby, above n 19, 36.

impartiality: a courtroom, a gavel, a gown.'[46] Also, Villez (2010) cautioned that audiences of imported 'American series … acquire tools enabling them to interpret the messages underlying the narratives, either consciously encoded or unveiling a less conscious collective national image'.[47]

(a) The Gavel: Jurisdiction

I focus on the participants' responses to the image of a gavel in *Court*. The image of a gavel is absent in Lithuanian courts but is very present in US trials both in courtroom and on screens (Levi, 2005; Moran, 2019). US trial movies also employ gavel as an indication of judicial authority. It is common for fictional judges to use a gavel to control the trial, and to achieve the dramatic effect necessary to create the engagement of a viewer.[48]

Since the construction of *Court*[49] is hybrid, judges' responses to its claims to reality through the genre's stylistic and substantive traits provide important insights about the (tans)formation of judicial authority through culture. First, I use an extract of the critical realm in the smallest focus group discussion to reveal one aspect of the role of popular culture in shaping judicial authority: when *Court* with its legal symbols plays a better social function as an authentic judicial image than reality, the authentic image is shaped purely through impressions of courtroom symbols over responsibilities that are attached to them.

The gavel reappears in the discussion when the members of the smallest group mutually aid each other to make sense of the reality constructed in *Court*:

[46] Kiršienė, Julija, and Edita Gruodytė, 'The highest rate of public trust in judiciary in twenty years in Lithuania: trend or coincidence?' (2019) 1(19) *International and Comparative Law Review* 133.
[47] Barbara Villez, *Television and the Legal system* (Routledge, 2010) 9.
[48] Ross D Levi, *The Celluloid Courtroom: A History of Legal Cinema* (Praeger, 2005) 43.
[49] See Chapter 1.

Judge Dallas: [sights] Very simple, even elementary language, totally vernacular...Perhaps we try *more somehow formally* [ST].

Judge Gill: [ST] *Too strict while* announcing the decision.

Judge Charlie: Hmm.

Judge Gill: Too strict.

Judge Dallas: And usually we stand up.

Judge Charlie*:* We stand up and we don't have any gavels [laughing].

Judge Dallas: Yes, there are no gavels.

Judge Reed: We have a gavel only at the Constitutional Court of Lithuania.

Judge Dallas: Its purpose here probably is to strengthen the impression.

Judge Reed: Surely, it is for the impression.

Judge Dallas: Yeah, yeah, yeah.

Judge Reed: If you noted, there was no legal norms in any of these shows. Oh, in the second show, there were but they did not match up at all.

Judge Charlie: There were some but did not match up.[50]

In this conversation, the judges actively make sense of the reality in *Court*. While Judge Gill evaluates the *Court's* judge as too strict, Judge Dallas rejects the *Court's* claim to verisimilitude and moves to a reflection on the use of a more official language and *standing up* during the delivery of a verdict. It is interesting how Judge Charlie interrupts and repeats this *standing up* but also, with laughter, connects with the reflection on the absence of a gavel. Note how Judge Dallas and Judge Charlie observe the absence of a gavel but Judge Reed notes its presence in the Constitutional Court. Judge Dallas commutes from the referential to the critical realm by acknowledging its presence as a dramatic function. Until this comment, for me it is hard to tell what type of reality the participants are responding to, but Judge Dallas' reference to the gavel to point to its dramatic function for the audiences clearly demonstrates her awareness of the constructedness of this reality.

[50] Focus Group Discussion 1 (Lithuania, 2019) 4.

Interestingly, Judge Reed agrees with Judge Dallas about the gavel's capacity for making an impression. However, I suggest that his next comment indicates a different treatment of the program's reality. He makes sense of it as some kind of 'real' because he notes and alerts others about the absence of legal norms as is customary in a court. This, I suggest, indicates his conception of a court not as jurisdictional materiality but as a visual metaphor, a system of signs where 'reality and representation [are] indistinguishable'.[51]

Moreover, Judge Reed's and Judge Charlie's observations of the absences speak of the contrasting imaginations of judging held by both participants as they make sense of the reality constructed in *Court* through the use of legal symbols. The importance of the symbols for authentic judicial image was already discussed in the previous Section A of this chapter where Judge Gill used a metaphor of 'bypass'[52] to explain the relationship between real and fictional spaces. Judge Gill's comment also indicates the treatment of the programme as real because like Judge Reed, she critiques this reality as lacking legal symbols. The use of the metaphor 'bypass' animates a spatial configuration when this meaning of legal symbols by Judge Gill connects with Judge Reed's interpretation about legality absent legal norms. I suggest that this reveals the difference between the participant's engagement with genre and with imaginative space that reminds us that '[a]esthetics isolated from some grounding in the ethical … invite … the will to power alone'.[53]

It is seen further, when Judge Gill compares the two shows and makes sense that *Culture Court* fails to represent reality, therefore does not play a social function and hence is to

[51] Andreas Philippopoulos-Mihalopoulos, 'Performing Metaphors' (2021) 1(24) *Theory & Event* 290.
[52] See this Section 1 in this Chapter for the responses to *Culture Court* genre.
[53] Richard K Sherwin, 'Law, Metaphysics, and the New Iconoclasm Passing On: Images' (2007) 11 *Law Text Culture* 71.

be understood as a genre of a talk show. In contrast, the presence of the legal symbols qualifies *Court as* satisfying the task:

> Judge Gill: It created such impression. It was visible in the first [show *Court*]. Well, even though she does not stand up but there was a throne [laughing].
> Judge Reed: Umm.
> Judge Gill: Well, I mean there was a table, a gavel, a dress, and it resembles a judge.[54]

It is interesting how Judge Gill (with laughter) brings in the image of a throne, which lessens the importance of a *failure to stand up*, earlier denounced by Judge Dallas and reiterated by Judge Charlie together with a gavel (also laughing). In these comments, Judge Gill describes her interpretation as an impression, and from it unfolds the larger imagery that reveals at least two important dimensions shaping Judge Gill's understanding of a more authentic judging reality shaped through this affective collective engagement with the realities of *Court*. The first dimension is distancing from the imagery of judicial values and virtues created through a critique of a failure *to stand up*, and the second – an erroneous use of legal symbols.

Firstly, Judge Gill withdraws from the imagery of judicial values and virtues collectively created through the critique of a failure *to stand up* during the delivery of a verdict and *a gavel that shoots*.[55] Also, her interpretation draws on the erroneous legal culture. Judge Gill reassembles the image of authority created earlier through the collective meaning making. Though the meaning was created through the group's critique about the gavel as inauthentic and not present in Lithuanian legal culture, Judge Gill does not share this meaning of a gavel as an unacceptable means in judging. I suggest that the legal symbols that Judge Gill affectively evaluates as more authentic and that allow her to identify

[54] Focus group Discussion 1 (Lithuania, 2019) 6.
[55] In my interpretation, a shooting gavel has an acoustic rather than ballistic connotation.

Court's image as closer to reality, come distinctively from US trial movies. This image of the authority on a throne resonates with a metaphor 'in America the law is king'.[56] Judge Gill's vision can be understood in terms of the widely researched phenomena of the export of meaning (Liebes, Katz, 1993; Machura, 2005; Villez, 2010; Sharp, 2006).

But my focus on authenticity guides us towards 'noticing'[57] how '[t]he technical comes to regulate ("control") the lifeworld …, reintegrating itself as an "authentic" part of the semantic, embodied situation in which humans find themselves'.[58] This is a crucial moment to gain awareness that Kant was wrong, and the problem is not that '[w]e are only ever just "appearance" to ourselves… [but that the] [s]emantic space was always artificial'.[59] I shall illustrate this with the further analysis of the meaning-making developments figured around the gavel in this focus group. It has to do with reflection.

(i) Theatrical Challenge

Concerns about manipulation of popular culture and the duty for a judge to manage her heart problematised by Gaakeer,[60] are animated in the following discussion. Judge Gill, who at the beginning of the chapter critically responded to the strictness of *Court* but embraced the gavel and a throne, in pursuit of relevance challenged the ideal of a dispassionate judge:

> Judge Gill: They say that we must be neutral. But this would be not interesting for the people in an [educational] show. I mean, the judge will be not interesting as he is supposed to be.

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[56] Jeanne Gaakeer, '"It's my culture, stupid!" A Reflection on Law, Popular Culture and Interdisciplinarity' in Michael Asimow et al (eds), *Law and Popular Culture: International Perspectives* (Cambridge Scholars Publisher, 2014) 288.
[57] Marett Leiboff, 'Challenging the Legal Self', above n 18, 317.
[58] Weatherby, above n 19, 32.
[59] Weatherby, above n 19, 34.
[60] See Chapter 2.

Judge Charlie: For the media.

Judge Gill: For the public [laughing].

Judge Charlie: Public is more interested in the shows and publications about negativity …

Judge Dallas: Also, an interest should be created not trough a judge … but through the fabula of a case…

Judge Gill: But I image the people returning from work … take more from an image than thinking about the fabula ... If I am not a judge, think I will change the channel if I see a neutral judge telling me a fabula. Why do I need the fabula? Nothing interesting happening because a judge is calm. Someone raises a voice, he quietens. We must also quieten. Instead, they should show a strict judge.

Judge Dallas: What is our goal then, Gill? Is our aim a show or education? Perhaps, people that are more intelligent will watch if our aim is education. We also do not watch all shows. We watch presidential debates that are popular now on [the national broadcaster] … It is more interesting for me to watch the shows that enrich you somehow. Again, I think depends on which audience is your target. If you want a circus, then … *I don't know.*

Judge Reed: [ST] *but in general I think perhaps*...

Judge Charlie: [ST] *it is unethical for a judge*.

Judge Dallas: [ST] *so I imagine*.

Judge Reed: [ST] *I mean* the court fiction is unnecessary.

Judge Gill's transgression animated a heated negotiation among the participants that tied judicial image with ethical responsibilities, but also revealed the 'antitheatrical prejudice …'.[61] Judge Gill's critique reveals an expected emotional reaction to judging as a control through fear. This is important for two reasons. First, it links with an observation that 'Goffman's social actors are constantly reflecting on their performances and thinking about how to manage and repair the impressions they create.'[62] Second, it shows an

[61] Leiboff, above n 26, 1.

[62] James Hardie-Bick, Phil Hadfield, 'Goffman, Existentialism and Criminology' in James Hardie-Bick & Ronnie Lippens (eds), *Crime, Governance and Existential Predicaments* (Palgrave Macmillan, 2011) 21.

acceptance of an account of emotional truth offered by the gavel on *Court* as an '"authentic" part of the semantic, embodied situation in which humans find themselves'.[63] But Judge Gill's preference of an image over fabula speaks of the 'theatricality',[64] that in turn helps me notice how this is not an [embodied intellect as a second language learning] but a critique of the antitheatrical atmosphere. This atmosphere is visible in the participants' resistance to 'a practice of the body and of the senses, and thus unruly and uncontainable'.[65] Reactions to the strict judge provocation manifest expectations of 'classical ideals of judicial conduct',[66] including managed emotions, as seen from Judge Charlies' reminder about judicial ethics. Moreover, Judge Dallas' comment reveals 'the need to publicly demonstrate one's mastery of behavioral norms and the moral integrity of one's person'[67] to belong to this group. This shows how a disciplining control between the bodies operates as 'Foucaultian power'[68] making law omnipresent, shifting power from 'right' to 'technique', and from 'law' to 'normalization'.[69] As a result of the 'affective staging of law',[70] the power is just less obvious.

[63] Weatherby, above n 19, 32.
[64] Marett Leiboff, 'Theatricality' in Peter Goodrich (ed) *Research Handbook on Law and Literature* (Edward Elgar Publishing Limited, 2022) 46. To *notice* is a challenge of theatrical jurisprudence through theatrical disruptions that demand response.
[65] Leiboff, *Theatrical Jurisprudence*, above n 26, 1. Very soon, this will be clearly articulated by Judge Jo.
[66] Sandra Schnädelbach, 'The Voice is the Message: Emotional Practices and Court Rhetoric in Early Twentieth Century Germany' (2019) 9(5) *Oñati Socio-Legal Series* [online] 616.
[67] Sandra Schnädelbach, translated by Adam Bresnahan, 'The jurist as manager of emotions. German debates on Rechtsgefühl in the late 19th and early 20th century as sites of negotiating the juristic treatment of emotions' (2015) 2 *InterDisciplines* 58.
[68] Andreas Philippopoulos-Mihalopoulos, 'Law is a stage: from aesthetics to affective aestheses' in Emilios Christodoulidis, Marco Goldoni, Ruth Dukes (eds) *Research Handbook on Critical Legal Theory* (Edward Elgar Publishing Limited, 2019) 217.
[69] Fred C Alford, 'What would it matter if everything Foucault said about prison were wrong? Discipline and Punish after twenty years' (2000) 29(1) *Theory and Society* 128. See Chapter 2 Section 1.
[70] Philippopoulos-Mihalopoulos, 'Law is a stage', above n 68, 210.

That Judge Gill's provocation inspired by popular culture of a challenge to a neutral judge is not a whim but sensorial rebellion against 'logos' …[71] becomes evident in this comment when Judge Gill connects the memory of her encounter with a scared participant and uses *Court* to reflect on her role:[72]

> Perhaps fear emerges after seeing this show with the judge who knows everything as the final instance. She slams, hits the gavel and that's it. A person comes to a court proceeding and trembles [laughing]. But principally we are solving a conflict.[73]

By wondering what this laughter is, I found Crawley's (2015) argument about law's use of irony as a means for 'law as a representational practice'[74] to distance itself from farce, which in this case could be seen as *Court*. However, as a judge in an inquisitorial criminal procedure, Judge Gill is also the sole author of the verdict. Because the theatrical helps us notice what law cannot (Leiboff, 2022), I observe that Judge Gill describes the 'technization'[75] of judging in action. The sound of a gavel obscures judging as a practice of conflict solving. As Moran observed, common law court cameras work to render what 'court considers to be "a balanced, fair and accurate" representation of the proceedings',[76] so this prompts me to ask what is behind the representation if 'judicial authority [is just] an image of power constituted in the minds'?[77]

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[71] Leiboff, *Theatrical Jurisprudence*, above n 26, 1.

[72] Drawing on Liebes and Katz (1993), 'the point of this pragmatic criticism is that it connects reflexively between the text and the reader's self-definitions of his experience or of his role'. Liebes, Katz, above n 24, 125.

[73] Judge Gill, Focus Group Discussion 1 (Lithuania, 2019) 10.

[74] Karen Crawley, 'The critical force of irony: reframing photographs in cultural legal studies' in Cassandra Sharp and Marett Leiboff (eds), *Cultural Legal Studies: Law's Popular Cultures and the Metamorphosis of Law* (Taylor and Francis, 2015) 201.

[75] Weatherby, above n 19, 33. See Chapter 2, section 3 where I explain this notion and its use in my research.

[76] Moran, *Law, Judges and Visual Culture,* above n 2, 165.

[77] Arun Sagar, 'Law and crisis: Conjunctions, correlations, critiques' (2022) 13(1) *Jindal Global Law Review* 2.

These questions guide my further analysis of the judges' responses to the image of a gavel in *Court* and what they reveal about the (trans)formation of the judicial authority through culture. Compared to the just discussed Judge Gill's affective involvement with visions of throned legality, Judge Jo's serious yet playful use of *Court's* gavel to inform judicial authority helps to notice an active rational technization of authority legitimated by fear. In Chapter 4, I suggested that after Judge Jo reflected on the current changes in courts' culture and recalled disobeying litigants, he used *Court's* gavel as a means for procedural control in civil trials:

> Judge Jo: [A gavel] could be required but there is none.
>
> *Required, you think?*
>
> Judge Jo: Sometimes it would be possible. Then you have to raise a voice and warn the participants of the case.
>
> Judge Jo: That they would control themselves and would not distract other participants. You have to interfere... and then the entire process goes off because a thought drifts away, everyone's attention slips, perhaps. Some may think that warning was unnecessary here. It should be talked as intended since this is a procedure.
>
> *Yes, yes.*
>
> Judge Jo: Judge presides over the proceedings, he has such powers.[78]

While Judge Jo makes clear his awareness about the absence of a gavel in Lithuanian courts, still he attributes the function of control of a trial order to the gavel. Affective 'Foucauldian power'[79] in this vision of judicial authority is shaped through a gavel and a voice. In *The Soundscape of Justice*, Parker (2011) showed how the dynamic between control and a gavel, or rather the gavel's silence, indicates the authority held by a judge over the juridical soundscape. To keep the control over procedure, the absence of a judge

[78] Interview with Judge Jo (Lithuania, 2019) 4.

[79] Philippopoulos-Mihalopoulos, 'Law is a stage', above n 68, 217.

could be substituted by the sound of a gavel[80] but also the silence of a gavel has the same effect if the control is embodied.[81] Accordingly, Judge Jo's response to the absence of a gavel still speaks of the authority shaped by desire for complete obedience to the figure of a judge, and control is an unmistakable note in Judge Jo's understanding of authority.

A comparison of the visions of authority engineered through the *Court's* gavel reveal an operation of the rational poetics and dramatic resistance on the Foucauldian stage. This image of authority shaped through the impressions of the throned legality[82] disturbs an image of authority shaped through impressions of the Soviet trial[83] revealing a negotiation between different judicial approaches and traditions in changing legalities. 'Still law commands and wants its commands to be accepted'[84] even though its shape shifts.

(b) The Dress: Master and Slave

As Crawley (2010) argues, 'onstage, the force of law appears as farce and the "illusion of legitimacy" is revealed as such.'[85] Theatre and law scholars problematised law's denial of its own theatricality as a mode of theatre. For example, by deconstructing encounters between law and theatre, Crawley (2010) demonstrated how theatricality can unmask law by revealing its force as farce:

> Theatre is an art form of risk, and performances can always fail to convince, persuade or enthral their audience. So too with law, and while its performances need to be repeated and consolidated to maintain their effects, each repetition necessarily runs the risk of revealing law's backstage and refraining the force of law as farce.[86]

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[80] Ross D Levi, *The Celluloid Courtroom: A History of Legal Cinema* (Praeger, 2005) 43.
[81] James Parker, 'The soundscape of justice' (2011) 4(20) *Griffith Law Review* 978.
[82] See Chapter 5 Section 1.
[83] See Chapter 4.
[84] Richard K Sherwin, *Visualizing Law in the Age of the Digital Baroque: Arabesques & Entanglements* (Routledge, 2011) 192.
[85] Karen Crawley, 'The Farce of Law: Performing and Policing "Norm" and "Ahmed" in 1969' (2010) 14(1) Law Text Culture [xxix] 264.
[86] Ibid 265.

So turning to the critical force of irony is significant in that it 'enables an immanent critique of law that remains sceptical about its formal self presentation and claims to mastery over meaning, and remembers that the law that is created culturally is also un-created and re-created culturally, and could be different next time.'[87] The question is what justice the images are 'bringing to mind'.[88] This could be seen as an example of a similar 'mode of theatre that disavows its own theatricality'[89] in responses to the *Culture Court* genre.

Similarly, Judge Ride who was extremely critical of *Court,* saw the image on *Culture Court* as agreeable, even so admitted his inadequate grasp from the extract 'whether this is a court or not a court',[90] and the critique of undertaking the court's role. The radiance of intellect is seen as an important quality of judicial authority:

> Who authorises you to make decisions recklessly? This is not a court, so why do you use legal norms here? This is not a theatre, and you should do your own thing. In this area, I would not like an overacting and assuming the role of court perhaps. So that people could see the difference, whether you are a judge or a real court.[91] But of course, here from a general context everything falls into places as it should be. Because, I might be wrong, but from my perspective the woman [the presenter] looks more intellectual. But for example, a deployment of legal codes does not make sense for me.[92]

In this comment, as Judge Ride responds to legal norms, he entangles reality and fiction, court and theatre. Judge Ride's involvement could be seen as Crawley's (2010) notion of Brechtian theatricality like 'a viewing experience in which the backstage devices that

[87] Karen Crawley, 'The critical force of irony: reframing photographs in cultural legal studies' in Marett Leiboff and Cassandra Sharp (eds), *Cultural Legal Studies: Law's Popular Cultures and the Metamorphosis of Law* (Taylor and Francis, 2015) 201.
[88] Ibid 192.
[89] Ibid 184.
[90] Interview with Judge Ride (Lithuania, 2019) 1.
[91] Interview with Judge Ride (Lithuania, 2019) 1.
[92] Interview with Judge Ride (Lithuania, 2019) 3.

sustain the onstage spectacle are revealed to the audience'.[93] Approaching this as a farce helps reveal how disavowal of theatre is a farce in itself and helps to build an argument about a mask and impartiality in service of the increasing visibility of the affective politics of jurisdiction.[94]

Since Judge Ride starts by asking a law question about the origins of *Culture Court's* authority, he animates a 'relation rather than human exceptionalism [as] the default starting point'.[95] It enables Judge Ride to reconnect drama and court spaces, a person and a mask, in turn prompting a negotiation of 'mediated identity'.[96] This is about production of meaning and it reveals the importance of understanding the difference between a social connection and technological communication as mediated socialisation which 'is not based on physical proximity but on the use of the same mediated forms of communication.'[97] That is amplified with proliferation of the digital communication. Filled with conventional signs '[t]he world of the machine is the world of rhetoric.'[98] Through this 'parasocial encounter'[99] 'the dividing line between artificial and human intelligence'[100] is perceived as unintelligible:

> Judge Ride: I would have felt cheated. When you see an unprofessional person with a serious face doing nonsense[101]...

[93] Crawley, 'The Farce of Law', above n 84, 248-249. See Chapter 7 for a detailed unpacking of this.
[94] See Chapter 2 for the framework that I have developed to understand *jurisdiction*.
[95] Margaret Davies, *Asking the Law Question* (Thomson Reuters (Professional) Australia Pty Limited, 2017) 494.
[96] Annese, 'Mediated Identity', above n 7, 371.
[97] Annese, 'Mediated Identity', above n 7, 386.
[98] Weatherby, above n 19, 33. Also see Annese, 'Mediated Identity', above n 7, 371-388; Wood, above n 6.
[99] Annese, 'Mediated Identity', above n 7, 371.
[100] Weatherby, above n 19, 35.
[101] Interview with Judge Ride (Lithuania, 2019) 4.

It is hard to clearly determine the positionality of the speaker, but here the turning of the performance of authority in mask from force to farce is distinctively at stake. Next follows the unmasking of the irrational violence of law (Crawley, 2010) as well as of an unconscious national image (Villez, 2010).

How culturally shaped law can be easily reshaped is revealed in Judge Ride's response to the use of legal symbols as providing credibility for the unprofessional legal evaluation on *Court*:

> For me it is a ruse, I do not know how to say. It is like a promotion of the fast credits or anything from those negative phenomena so prevalent in our society. I could compare that to uh the gambling business in the end. Well, that short term wish to watch how some clumsy granny, apologies, stole chickens or whatever she did. So, a judge bangs a gavel and says, granny, there is a sad ending for you according to this article [laughing]. Perhaps it is joyful. I do not have to go to court, I see how the granny got scared for those chickens or was ordered to put a high fence. ... [Court] is the worst that could be done. Even worse for me is when *Bicycle News* sometimes portray judges. I don't really like it. But the masters make it, so it is fine.[102]

Judge Ride's articulation that the feeling of cheating is evoked by watching *Court* and his laughter indicates his responsiveness to the 'affective realm of reality television that is its central structuring device'.[103] In making sense of *Court's* genre, Judge Ride focuses on the genre's function to produce 'presence effects – effects that prime our bodies, essentially predisposing us to experience an event and its attendant symbols in a particular way'.[104] Judge Ride makes sense of audiences' enjoyment from seeing fear and order, and this suggests that 'justice was "felt" and thus translated into emotional categories'.[105] Expectation of joy is partly in line with Machura's (2009) argument about peoples' desire for 'orientation of what is and is not acceptable'.[106] In this sense, the real court becomes

[102] Interview with Judge Ride (Lithuania, 2019) 5.
[103] Wood, above n 6, 591.
[104] Ott, Mack, Critical Media Studies, above n 5, 127.
[105] In Schnädelbach, above n 66, 48.
[106] Machura, above n 3, 326.

unnecessary if media provides that pleasure. This way, by using the perceived appeal of *Court* to the emotion of fear, Judge Ride resists it as a competitor to the authentic feeling of the court image.

After Judge Ride unpacks his feeling of 'being cheated through the inauthentic practice done with a serious face on', he compares *Court* to the other TV show *Bicycle News*. This allows Judge Ride to proclaim *Court* as the worst. The Lithuanian critical political satire programme that Judge Ride compares with *Court*, in 1995 initiated a 'systemic, public and legitimate parody of the metalanguage, its symbols and signs'.[107] Judge Ride's harsh evaluation reveals 'the hidden backstage of law'[108] as an interplay between cultural discourses of marginalised irrational and motivations to censure political critique in response to *Court*.

In this context, I consider Sage's emphasis on the affective dimensions of her performance to be particularly instructive:

> A judge who can affect people to watch, believe and desire must be a woman after all. Because feminine empathy is not masculine. And that scant masculine tear. Well, no no no, gender was my advantage, while in a legal system it is a minus. That was my advantage. It is in this place that the show so much disturbed in Lithuania. The whole problem that it was too early. Our society was late since the Christening period.[109]

[107] Lithuanian research (Baločkaitė, 2005) argues that 'Bicycle News' is a long running critical political satire programme that reached the apogee in 2002. The parody started to threaten reality in a form of the satirist's election campaign. The satirist used a fictional rhetoric to run as an independent candidate in the president elections and came fourth out of 17 candidates. Baločkaitė, Rasa,'The postmodern epistemology of power and its expression in Lithuanian Public Discourse' (2005) 01 *Sociologija. Mintis ir veiksmas [Sociology. Thought and Action]*

[108] Crawley, 'The Farce of Law', above n 84, 264.

[109] Trinkūnas (2006) argues, that 'beginning of the loss of the official positions of the Lithuanian paganism was in 1387, after Lithuania was baptized, however, the new religion was only as a 'surface belief' in people's minds nearly two hundred years. An active advocacy of the Christianity in Lithuania by various means was started only in the 16th-17th centuries'. Jonas Trinkūnas, 'Old Lithuanian faith after the state's baptism' (2006) 1 *Liaudies kultūra* [*Folk Culture*] 47.

Articulating as emancipation in the male-dominated system of artistic production, Sage unpacks the mechanics of aesthetic legitimation through the constellation of desire, power and knowledge. In this portrayal, she highlights the importance of emotionality and sensitivity as a means to connect with audiences in a much more profound way. This suggests an inherent advantage due to her gender even in a patriarchal society. Shaped as a social critique of paternalistic culture, inviting to 'the immense pleasure of proper Schadenfreude'[110], nevertheless, it does not have a subversive potential.[111] Moreover, it evokes a 'doctrine of charisma as a form of sublime … an icon of the Virgin Mary … "depriving me of strength and reason": in the "sublime" account of charisma we do not engage, we succumb, are placed beyond reason and discourse. Such is the overwhelming power of Weber's doctrine of leadership personality'.[112] However, there is no problem with the patriarchal custom underpinning hierarchies of power in the popular entertainment practices of that time.

This is seen from her appreciation of the developed ability to control facial expression:

> I am glad I know how to control my face mimic ... My producer calls me ... perhaps I will get excited and show my emotions, you know it is a show for him. One thing for me is to keep a serious face but he is a businessman, a producer. His concerns are results and ratings ... Would be good if I danced.[113]

Sage embodies control as a virtue. Here Sage's face can be seen as the embodiment of Agamben's mask mediating the representable–unrepresentable at the intersection of an ideal of judicial neutrality and the laws of show business. It animates body politics of

[110] Stefan Machura, Olga Litvinova, 'Reflections of Legal Culture in Television Comedy: Social Critique and Schadenfreude in the US Series "Frasier"' (2021) 34 *International Journal for the Semiotics of Law - Revue internationale de Sémiotique juridique volume* 94.
[111] Leiboff, *Theatrical Jurisprudence*, above n 26, 14.
[112] Martha Dana Rust, Brigitte Bedos Rezak (eds), *Faces of Charisma: Image, Text, Object in Byzantium and the Medieval West* (BRILL, 2018) 146.
[113] Interview with TV creator Sage (Lithuania, 2019) 12.

control and order within and beyond the law. While Sage is in control of her face, the producer is in control of her body, dynamics of front and backstage plays out too. By comparing the role of the face in production of authority in *Court* as told by creator Sage, I show how theatre can reveal the operation of a mask as an *exported meaning*.[114]

What happens when the marginalised disturbs the frontstage? I compared Sage's insistence on dispassionate ideals with the British TV Judge Rinder's preferred methods of staging authority through facial expression as politics of authenticity. This way, the image of a face could be seen as a challenge of popular culture to the positivist myth. The context of the performance of fictional judging, an 'authentic and not done deliberately'[115] face expression, as Moran (2020) points out, illustrates 'doing and performing being ordinary'.[116]

In stark contrast to Sage's performance, is the practice of dancing that functions as a powerful site to generate and boost attention capital in the British mass media machinery *Strictly Come Dancing*. As a contestant in this celebrity dancing competition, TV Judge Rinder demonstrated his dancing prowess in a flamboyant transformation:

> The 'scales of justice' were on the bench to Rinder's left in his right hand was a gavel. As he brings the gavel down in time to the music, glitter cascades on to the bench … Some 25 seconds into the dance the judge goes through a transformation…he rips off his judicial robes to reveal an open, sequined shirt and a muscular torso beneath.[117]

Under the spell of entertainment, the gavel's function transforms to enact legality through glitter, but is it really a transformation or an image of transformation? As Crawley argues,

[114] See Chapter 2 about export of meaning in cultural legal studies.
[115] Moran, *Law, Judges and Visual Culture,* above n 2, 218.
[116] Ibid.
[117] Ibid 217.

'[o]nstage, the force of law appears as farce and the "illusion of legitimacy" is revealed as such.'[118] The 'veil of symbols' is not a garment that can be removed but the location where action and consciousness, performance and insight, matter and idea, fail to merge, yet constitute legitimacy.[119] As Goodrich notes:

> It is clothes that make up the image of the person and the person of the image. It is a very simple and long-recognized humanist principle that we are what we inherit and what we make of it … No matter, much matter, we are never immune to spatial configurations, apparel and appearance, aspect and image, though we often deny.[120]

Comparison of the visions of authority engineered through responses to an image of dress reveal the operation of the rational poetics and dramatic resistance on the Foucauldian stage.

Since culturally shaped law is easily unshaped (as I will show in Chapter 6, the Transformations Chapter[121]), through the trusting relationship, colonial norms can be challenged, and through that, hierarchies that prevent marginalised from emancipation. Drawing inspiration from the largest focus group discussion, I suggest that a more constructive critique could be seen by focusing on the staging as an 'intermittent legitimacy'[122] because when performance spaces are shifting (Mulcahy, 2021) and it all depends on a 'choice of quality sources in legal procedure'[123] it is crucial to have a diverse choice of quality sources available to choose from.

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[118] Crawley, 'The Farce of Law', above n 84, 264.
[119] Weatherby, above n 19, 36.
[120] Peter Goodrich, *Advanced Introduction to Law and Literature* (Edward Elgar Publishing, 2021) 136.
[121] I will argue that in judges' imaginings becomes unveiled operation of *Culture Court* as charisma in which 'we do not engage, we succumb, are placed beyond reason and discourse.' Rust, Rezak above n 112, 146.
[122] Weatherby, above n 19.
[123] Mulcahy, above n 17, 493-494.

(c) The Space: Resistance to Rhetorical Artifact

When making sense of *Court's* genre, the contextualisation with parody also emerges in the largest focus group discussion. Judge Nev also responds to the gavel for making sense of *Court's* social function in the disseminating of a judicial image that prompts interesting discussion of the genre:

> Judge Nev: The changed formality of the regalia caught my eye for a bit. [In *Court*] the judge is in judicial dress with a gavel that we actually do not have. Perhaps the intention was to show the judging through appearance.
>
> M: *Does this correspond with reality?*
>
> [ST] *No!*
>
> Judge Alex: No, because the first [Court's character judge] sat during the announcement [of the verdict]. We must stand while we announce the decisions. It [laughing] instantly caught my eye that she was sitting during the announcement [of the decision].
>
> Judge Brook: There are occasions when we can sit. Like sometimes the Constitutional Court sits. You know, that is not a point. Because, I think, when announcing a prolonged judgement, a judge should read introduction and resolution and afterwards sit and explain the law for three or four hours. What is the point for him to stand? The formal procedural moments are sufficient here. I am interested in another question: what is the purpose of it? If this show is like the *Bicycle News,* then indeed, we model situations by increasing, as I say, that word *autoerotics*. The situations should be the most interesting: talking about chickens, abruptly transitioning to a car, afterwards we talk about a fence, moralise and so on. What is the purpose? If we want to educate and show people a process in action to increase a respect for it. Alas, now it goes in the opposite direction, respect decreases.[124]

In this negotiation of constructed judicial authority within *Court*, Judge Alex, as well as Judge Nev, use the same metaphor 'caught my eye'. As Goodrich (2021) puts it: 'The

[124] Focus Group Discussion 2 (Lithuania, 2019) 4.

appeal to the senses is primarily to sight as the most direct path to persuasion.'[125] That, I suggest, indicates that both Judge Nev and Judge Alex are responding to the same rhetorical agent but through different approaches. Judge Nev observes the absence of a gavel in Lithuania, but he still uses a set of symbols to make sense of *Court's* construction of the image of a judge. However, after the participants unanimously reject *Court's* verisimilitude to reality, Judge Alex challenges Judge Nev's interpretation of representation through a theatrical dimension of a seated position of *Court's* judge.

I suggest that Judge Alex challenges spectral normativity by responding to the ordained structures within an adversarial trial.[126] This way 'a courtroom'[127] is revealed as a point of tension because of its importance in both law and culture, therefore as an 'artifact [it] is "relational" because it presents this dialectic of transparency and obscurity in the medium of symbols'.[128] This way, an insight into an operation of relational artifact can be unpacked through storytelling, theatrical and technological dimensions of this encounter.

Challenging an organisation of display reveals how atmosphere is produced from within (Philippopoulos-Mihalopoulos, 2019). Storytelling spaces within *Court*, as a reality judging format of professional practice regulated by legal and ethical standards, prompts to reflect critically on oneself and the world, explorable through authenticity (Hill, 2018). In this case, use of such storytelling space is evident from how Judge Alex commutes between referential and critical realms. That is, after articulating her critical statement

[125] Goodrich, above n 118, 98.
[126] Crawley, 'The Farce of Law', above n 84 cited in Leiboff, 'Theatricality', above n 63. For a useful overview of a work on normativity embedded within adversarial trial procedures see Moran, *Law, Judges and Visual Culture,* above n 2, 4.
[127] Julija Kiršienė, and Edita Gruodytė, 'The highest rate of public trust in judiciary in twenty years in Lithuania: trend or coincidence?' (2019) 1(19) *International and Comparative Law Review* 133.
[128] Weatherby, above n 19, 36.

about *Court's* tension with reality, 'No, because the first [*Court's* character judge] sat during the announcement [of the verdict]', she uses it to reflects on her own practice, 'We must stand while we announce the decisions'.

Moreover, to reorient Judge Nev's interpretation, Judge Alex uses the moment of *Court* that was created with a change in camera use and reveals a noteworthy aspect of responsiveness in the technological dimension of mediated reality.

Figure 5.1 *A Long Camera Shot Showing Arrival of the Court*

Note. Source: *Court* team's personal archives

Figure 5.2 *A Medium Shot Showing the Announcement of a Verdict*

Note. Source: *Court* team's personal archives

The long camera shot is used when the characters of a policeman and the judge enter the courtroom, as shown in Figure 5.1. But once the character judge sits down in her chair for the delivery of a verdict, the camera shifts to a medium shot, as shown in Figure 5.2. Camera techniques play an important role in visual storytelling (Ott, Mack, 2014) and 'potentially create for the viewer a vivid experience of close proximity'.[129]

Another related technological aspect is the visibility of a cameraperson with a camera in the shot (see Figure 5.1).[130] This can raise the audience's awareness about the artifice of

[129] Moran, *Law, Judges and Visual Culture,* above n 2, 135. In Chapter 7, I present argument that a montage of two final shots of a close-up plays and important role in shaping judges' responses.
[130] While in this picture the cameraperson is blurry, in the montage of clips demonstrated to the judges this character is clearly discernible.

performance, in turn capturing them in what Crawley (2010) calls '[t]heatricality [as] a viewing experience in which the backstage mechanisms that sustain the onstage spectacle are revealed to the audience.'[131] This tension of what is seen and what is obscured was problematised by Moran's (2020) study of the court cameras in a UK context. Through the theatricality as a practice of noticing (Leiboff, 2022), I argue that this is an illustration of the resistant response to the affective jurisdiction manifesting through the siting *Court* judge as a spatial configuration of authority[132] of throned legality that Judge Gill and Judge Jo embraced. It is Judge Alex's insistence on the standing judge that unmasks and subverts order where '[t]he power of the state is seated; everyone else has to stand'.[133] I suggest that Judge Alex's withdrawal from the atmosphere allows an engineering of 'a surface of flat ontology, without pre-formed hierarchies and boundaries across species or various kinds of materialities'[134] to think of the 'new forms of law within and beyond formally constituted legal assemblages'.[135]

Returning now to Judge Brook's challenge to the ordained structures embedded within the popular culture. Employment of the *Bicycle News* to critique social function played by *Court's* genre indicates that Judge Brook responds to the same structures as Judge Ride and creator Sage did. But it is *Culture Court* that inspires Judge Brook's law of command.[136] Questioning respect against the tropes of standing and popular critique,

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[131] Crawley, 'The Farce of Law', above n 84, 249. Also see Chapter 4 about the way Judge Finley used this strategy in the interview with me.
[132] Goodrich, above n 118, 136.
[133] Cornelia Vismann, 'In judicio stare: The Cultural Technology of the Law' (2011) 23(3) *Law & Literature* 314.
[134] Andreas Philippopoulos-Mihalopoulos, 'The movement of spatial justice' (2014) *Mondi Migranti* 6.
[135] Leiboff and Sharp, above n 42, 5-6. This is a focus of Chapter 7.
[136] See Chapter 1 about a claim that *Culture Court* produces material meanings (Ramūnas Čičelis, 'Kabinetinės kultūros sugrįžimas' [The return of the cabinet culture] kulturpolis.lt (2017) (Lithuanian only) <http://www.kulturpolis.lt/tv-trajektorijos/kabinetines-kulturos-sugrizimas/>). In Chapter 7, overt role of *Culture Court* is unmasked.

Judge Brook radically reorients the discussion to the critical realm. While he uses the same archetypical theme as Judge Ride, Judge Brook shapes a completely different approach to the judicial audiences. The theme that he generalises in these texts is the shows' complicity in declining respect for the legal authority rather than desire for the order through fear. In contrast to all other participants, Judge Brook employs a specific critical practice in response to *Court's* constructed reality – 'autoerotics'. At the beginning of the focus group discussion, Judge Brook clearly stated his understanding of the genre and the approach to the interpretation of the shows yet unseen, but stating that 'he has seen such autoerotics of Russia with real and unreal judge at the front.'[137] Judge Brooks' use of the term 'autoerotic' is in line with the media erotics approach that 'captures the dual character and function of [Barthes's second mode of pleasure] *jouissance*: transgression and production.[138] From this perspective, '[e]roticism is, at once, transgressive (of the status quo or established order) and productive (of something new), which is why Eros was also known to the Greeks by the epithet Eleutherios, which means "the liberator"'.[139]

Therefore, I suggest that this is law in a mode that does not only deny its theatricality and is embodied but also challenges us to notice by disturbing 'law's ontologies, including a spectral normativity that has its origins in a deep hostility towards theatre.'[140] In the next chapter, I unpack the process of (trans)formation using a theatrical lens in this largest focus group discussion.

[137] Focus Group Discussion 2 (Lithuania, 2019) 2.
[138] Ott, Mack, *Critical Media Studies,* above n 5, 287.
[139] Ibid 289.
[140] Leiboff, *Theatrical Jurisprudence*, above n 26, 16.

C *Conclusion*

This chapter used several examples of the participants' responses to the constructed reality in *Court* and *Culture Court* with a particular focus on their expectations of the genre. The analysis compared the participants responses to the constructed reality of *Court* and *Culture Court*. I argued that *Court* serves a stronger social purpose as an authentic judicial image than reality when the image of judging is formed solely via impressions of courtroom symbols rather than the duties that are tied to them. As I will show in Chapter 6, the Transformations Chapter, such an image is easier to resist than the jurisdiction of charismatic authority of *Culture Court*.

CHAPTER 6

'DO YOU UNDERSTAND HOW MUCH I HAVE TRANSGRESSED HERE?': INTERROGATING DYNAMICS AND CONSEQUENCES OF NOTICING IN THE POSTCOLONIAL LEGAL SELF[1]

A *Introduction*

So far, in the analysis chapters I demonstrated how through the agents of popular culture, participants respond to the challenges of law and (trans)form understanding of judicial authority. In this chapter, I interrogate discussions in the largest focus group, and present the argument about Judge Brook's transgressions and performances of theatrical jurisprudence emerging from this encounter. To do so, I draw on theatrical jurisprudence (Leiboff 2019) as a practice to challenge myself to notice and respond to the legal challenges in the jurisprudences as performed through these judges in the focus group discussion. This theatrical jurisprudential analysis provides illustration of the potential of theatrical jurisprudence to guide practice-led methods of legal research.

In what follows, I present case studies of the theatrical challenges and responses to them in the largest focus group discussion, followed by what I argue is a 'poor theatre' that demands response and challenges to notice what law cannot, and my corrected response to this act. However, the response to this theatrical challenge is still my work in progress.

[1] This chapter is based on a published article, Aiste Janusiene. "'Do You Understand How Much I Have Transgressed Here?': Interrogating Dynamics and Consequences of Noticing in the Post-Colonial Legal Self" (2021) 25 *Law Text Culture* 53.

B *Towards a Caring Legal Self and the Conditions of Noticing*

While the television judge shows are expected to be perhaps controversial but still entertaining, for the judges in the focus group discussion, short extracts of the shows did not function as entertainment. Instead, this tension between fiction and reality animated a sense of powerlessness through the perceived threat of doubts in courts' ability to achieve justice. After talks about the characters and performance of authority on the shows, question Four invited participants to self-reflect on the effects and influences of the shows. I invited participants' reflections on this *Culture Court* message:

> Thank you, Honoured Jurors, for your opinion. Today we have a twofold situation. An issue regarding the newest [book] 'Criminal Odyssey of the Cucumiform' by the honourable journalist and the facts depicted in it, real facts, has been previously brought to the court and a ruling already issued. The character should have been acquitted of all the charges against him under the Article 39(1) of the *Criminal Code* of the Republic of Lithuania.
>
> However, this is a court procedure in this studio, and I wish to slightly twist the verdict. Considering some contempt of the court that we faced in the studio, also a total absence of repentance, as well as what has been proven by the prosecutor that the accused Vytas has shown no remorse, nothing ensures that after leaving this studio he will not return to the previous activities of the gang.
>
> Therefore, my decision would be as follows: to concur with the prosecutor and to apply the article 59.2.1 of the *Criminal Code* of the Republic of Lithuania that it [active cooperation with the criminal investigation] was a mitigating circumstance as it helped to solve the crimes committed by the organised group of criminals. I would like to conclude by saying: let us not chase and succumb to the allure of quick money. There is a good expression that 'Almighty gives with one hand and takes away with the other.' Hence, it is better to earn an honest penny and to sleep tightly. I will see you the next time when solving the problem that is no less important.[2]

Experiences of the shows' effects generated different concerns as participants responded to this message. The interplay of concerns revealed two competing paradigms: a new

[2] 9/3/2018 episode of *Culture Court*.

paradigm of engagement with public opinion instead of impartiality, but in both the judicial role is seen as determined by law. A public oriented approach becomes visible when Judge Nole reflects on effects, a threat of doubt in courts' ability to achieve justice is revealed, where the reality determined by the shows is seen as interfering with legality shaped by the rules of conduct, the court procedure rules, and responsiveness to the public:

> These shows have a purpose to determine the truth for the society, but they never show the aspect of the judicial work. I often notice that people ask: 'Why the decision is like this? The right decision would be different' … As a result, people do not understand that judges also have to obey the rules of conduct as well as the court procedure rules. They never show that. We see the court procedure clearly in the American movies but in these shows we do not portray that … For example, like in [*Culture Court*], as I understand, the person was acquited, but the society wants to sentence him. Perhaps a judge also wants to sentence, perhaps he sees that something happened in there, but he has no evidence.[3]

The interplay of Judge Nole's cautious articulation of her understanding of the *Culture Court* idea 'acquitted, as I understand', and her association with the public through a shared punitive desire reveals a concern with obscuring shared interests due to the evidentiary rules. The significance of evidence plays out through the concern with a prohibition to punish in their absence, which hinders a shared desire to punish. In the continental legal tradition, that was described as an 'antilegalism … culture in which the idea of democracy resides in politics alone'[4]. The fear of the TV shows obscuring this shared desire and challenging courts' ability to achieve justice could be seen as a manifestation of a 'bow to the popular will'[5] which at the time of the focus group discussion was shaped by the populist right-wing politics of the ruling majority.

[3] Focus Group Discussion 2 (Lithuania, 2019) 10.
[4] Barbara Villez, *Television and the Legal system* (Routledge, 2010) 332.
[5] Helle Porsdam, 'Television Judge Shows: Nordic and U.S. Perspectives', *Oxford Research Encyclopedia of Criminology* (online) 29 March 2017

Unlike Judge Nole's perceived threat to a punitive desire shared with public, Judge Nev responds to a perceived threat to the image of a judge as objective and impartial as he builds on Judge Nole's interpretation:

> Judge Nev: Well, a judge also doesn't say 'I think you did it, but I don't have evidence. So, you are free to go'. This is not acceptable, but this is what they conveyed in that show.
>
> Judge Andy: No, no, no, a judge cannot say this.
>
> Judge Nev: The problem here is that sometimes the category of justice is being mystified, what is right, what is wrong.[6]

With a certainty, Judge Nev reformulates the *Culture Court* message as if the fictional verdict set the defendant free. The significance of evidence plays out through a concern with an act of saying that a defendant is free despite the judge's belief in his guilt. Therefore, I suggest that Judge Nev's response also evokes a threat to an illusion of an unquestionable authority. Judge Nev's condemnation[7] of an imagined stepping over the boundaries by the fictional judge is also shared by Judge Andy as she passionately concurs by reiterating the act of 'saying this'. Psychology research has argued that, in communication, condemnation is used to make claims to objectivity and impersonality[8]; therefore, these judges' passionate disapproval could indicate a perceived threat to the ideal of a positivist judge.

These few examples revealed an interplay of different legalities on a tension between fiction and reality, as perceived through *Culture Court*. What is common to these accounts

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<https://oxfordre.com/criminology/view/10.1093/acrefore/9780190264079.001.0001/acrefore-9780190264079-e-197>.

[6] Focus Group Discussion 2 (Lithuania, 2019) 10.

[7] About the communicative function of condemnation see Sharon Lamb, 'The Psychology of Condemnation: Underlying Emotions and their Symbolic Expression in Condemning and Shaming' (2003) 68 Brooklyn Law Review 929.

[8] Ibid 932.

is their shared commitment to formal law. Discussions shed a light on the participants' experiences, shaped in the conditions that demand bodily responses to a challenge of the legality that these judges were trained into, because:

> a sensory disruption of the theatrical interferes with law's ontologies, including a spectral normativity that has its origins in a deep hostility towards theatre, out of which legal antitheatricality was shaped … provoking a dangerous and transgressive response, initiating and provoking potential lawlessness.[9]

In these conditions, bodily responses animated negotiation of formal legality through practices of theatre. This is the focus of the next section.

1 *Theatrical Antonyms in the Post-Totalitarian Context*

Negotiation of the formal law in response to the challenges of theatrical antonyms and self-reflection created the conditions to raise awareness about various dimensions of judging, which in turn led to a rethinking of impartiality and emotions in the judicial role. I outlined in the outset the circumstances that indicate the context of democracy in flux due to memory politics. Cserne argues that 'unresolved problems of collective (political) identity of the societies'[10] are revealed in the debate on formalistic judicial styles of Central and Eastern Europe countries. A clash of competing narratives manifested between Judge Greer and Judge Brook in the beginning of the focus group discussion. Underpinnings of an anti-formalist narrative are visible in Judge Brook's challenge to the core of the formalist judging, specifically – depersonalisation of a judge:

> Judge Greer: The first mistake which caught my eye was that the judge announces a decision as if from herself. But the judge never announces [a decision] from himself, he announces a decision on behalf of the Republic of Lithuania or on behalf of the court.

[9] Marett Leiboff, *Towards a theatrical jurisprudence* (Routledge, 2019) 9, 90.
[10] Péter Cserne, 'Discourses on Judicial Formalism in Central and Eastern Europe: Symptom of an Inferiority Complex?' (2020) 28(6) *European Review* 883.

> Well, because the decision is depersonalised from the judge. It was 'Well, I say this, and I make this decision', right? It is at once her decision, not the court's. This is a mistake, of course.
>
> Judge Brook: I could argue with [my] colleague about this being a mistake. Because in contrast to you, I announce the introduction and resolution, after that I do not look at my text and explain what I am thinking and why I made such a decision.[11]

In contrast to the normative Judge Greer's commitment to the abstraction, Judge Brook's gesture of resistance speaks of the presence and the personal against the declared detachment. This challenge of the embodied authority to the depersonalised authority plays out as a tension between the theatrical and antitheatrical through 'transgression as antonymic of order, [which] offers a means through which we manifest what it is we notice, while liveliness and courage, as antonymic of morality, asks us to act and respond rather than deferring to ideals and abstractions'[12]. That is, Judge Greer points out as a clear mistake a fictional announcing of a decision based on one's personal choice. His impatience is situated on a tension with a fictional whim that interferes with a judicial authority given by the State through the Constitution. In response to Judge Greer, Judge Brook invites discussion on the role of a judge. Judge Brook actually cites Article 308 of the *Code of Criminal Procedur*e of the Republic of Lithuania, 'Announcement of the Sentence', but he animates the abstract norm with his own lived experience. Juxtaposed to Judge Greer's critique of an announcement from oneself, Judge Brook's liveliness created conditions to notice how announcement only in the name of other animates the theatrical mask which evokes the distance from the responsibility of the decision[13] by separating the grounds of legal judgment from the judicial self.

[11] Focus Group Discussion 2 (Lithuania, 2019) 12.
[12] Leiboff, above n 9, 138.
[13] Richard Mohr, 'Identity Crisis: Judgement and the Hollow Legal Subject' (2007) 11 *Law Text Culture* 123.

Theatrical antonyms function as tools for awareness of the reappearing injustices of the past[14]. However, they can also easily deny justice if a body is not trained 'to unite consciousness and instinct'[15]. Judge Brook's second challenge to the formal law also undoubtedly speaks about the legal disruption. This time, the abstract law confronts liveliness that is positioned on the very 'edge of danger'[16]. This interplay of theatrical presence and formal legality created an encounter that demands bravery. But animation of the theatrical antonym of courage, situated on the opposite end of a scale to morality, created conditions to notice manifestation of the body politics of the past. As I suggested in the previous section, participants' interpretation of the *Culture Court* message problematised judicial authority through the evidentiary rules, although with different stakes. It is in these conditions that Judge Brook's transgression steps over the rules of ethics into the life to prompt nonconformity:

> Judge Brook: People are people, especially in the criminal cases. Someone from the civil case hearing judges, perhaps Judge Nev, said that we shouldn't. Well, I have not much time left to work so I am not afraid of anything. [*laughter*] The time has come when I can misbehave. Not literally, so that not to disrespect and breach ethics. Well, if I acquit, I say, you know, I don't have evidence, but I feel intuitively that they could have and perhaps they did that. Well, there are those situations when in the evening, you think, 'I will sentence'. But later you think: 'There [is] no evidence, but well maybe'.
>
> Judge Alex: I'd like to.
>
> Judge Brook: So that the person would leave with the realisation that I am not that naïve, and it is especially needed. My rules of the game are the Code, the court procedure rules, the examination of evidence and so on. But also, there is life. I don't want to give up. I don't want a person to leave, and I let him know that, you know, according to

[14] Leiboff, above n 9, 138.
[15] Ibid 37.
[16] Ibid 105.

the examination of evidence and so on, but intuitively I think to myself that he could have done it. Someone could say that it is not good but …

Judge Andy: In my mind, it is awfully wrong, because there is such thing as the presumption of innocence.

Judge Brook: Huh.

Judge Andy: And we must respect it. But when we say so, that is it. There is no presumption of innocence.

Judge Brook: No, no, no. Here, I disagree. No, I disagree. This is a dilemma of life and work, the problem of all judges in all tiers and in all countries.

Judge Andy: Um.

Judge Brook: Well, but how, if you intuitively comprehend that most likely he has done it, but you must acquit because you don't have that base. You must …

Judge Andy: You must respect that verdict and that person and do not say anything.[17]

The tension between Judge Brook's passionate defence of judicial authority and Judge Andy's similarly passionate outrage about disrespect of human rights constructs an atmosphere where a clash between formal legality and authority beyond law becomes visible. I see a role of Judge Andy's insistence to respect human rights as twofold here. On the one hand, it is undeniably inhumane to strip a person's ability to defend themselves at the court of law. However, the 'strong rhetorical function'[18] of the presumption of innocence here also could be seen as a muting of a speaking body[19] while Judge Brook's passionate insistence on the importance of lived experience could be seen as resistance to the law's dramatic pretence which functions to guard:

> the legal interpreter from the unruliness of the body. The lawyer's lifeworld is held in the body, through training that points us to notice, or fail to notice, what law holds within it … What that training does is make us responsive or unresponsive, through law.[20]

[17] Focus Group Discussion 2 (Lithuania, 2019) 12-13.
[18] Elies Van Sliedregt, 'A Contemporary Reflection on the Presumption of Innocence' (2009) 1-2(80) *International Review of Penal Law* 260.
[19] Leiboff, above n 9, 83.
[20] Ibid 30.

Indeed, Judge Brook's voicing of the lived experience appears to me too chaotic to be unambiguously shoehorned into the presumption of innocence. By letting the body speak Judge Brook again challenges disengaged judging, and the myth of an ideal of justice through formal law. The theatrical antonym of 'instinct, as antonymic of thinking … is what's needed to respond to the liveliness of being or the possibility of noticing as sympathy'[21] but this instinct must be united with consciousness or else it becomes exhibitionism[22]. Judge Brook's intuition here is situated on a tension between irrational and rational, but this tension strongly resonates with a theorisation of the slippery boundaries within the Soviet criminal justice, where a more:

> imaginary than real political criminality embodied one basic principle of the Soviet concept of crime – a replacement of the concept of guilt with the concept of danger to a personality. Those people were prosecuted not because of what they had done but because of who they were. Here the concept of a 'possible crime', developed by Arendt seems to be close to reality.[23]

Another echo of legal antitheatricality is evoked by Judge Brook's form of encouragement in response to Judge Nev's concern with vulnerability of an absolute authority but without any concern how it affects law; like 'an image of law that affords the legal self – not only the actual site of power – an untrammelled sense of self-authorisation.'[24]

The importance of awareness beyond the self and the work it can do for legal antitheatricality manifested in the conditions created through an intersection of three

[21] Ibid 138.
[22] Ibid 37.
[23] Monika Kareniauskaitė, *Crime and Punishment in Lithuanian SSR* (PhD Thesis, Vilnius University, 2017) 191.
[24] Leiboff, above n 9, 25.

competing paradigms. After reflecting about the effects of the shows, the focus group participants were invited to imagine an ideal judge to be portrayed on television:

> Judge Nev: The Code of Judicial Ethics ... clearly states what is forbiden ... Because at least those people in my environment do not understand and they say, 'Why judges are silent when someone slander them [or] that silly or smart decision'. A judge cannot do it, ethics do not allow. [*laughing*]
>
> Judge Alex: But I'd like to take notice of how [on television] they show a judge after he announced the verdict. He is interviewed and he himself comments about the sentenced person that the behaviour was brutal. [*sighs*] That was really inappropriate for me. The judge can't do this himself. You decide, you make a professional announcement, you tell what the sentence is. But when the judge evaluates the behaviour after he leaves [the courtroom]. I don't know – this conduct is certainly not appropriate. You know, afterwards I at once turned off [the television] and didn't watch it anymore. You know, it is not acceptable in any way. …
>
> Judge Brook: I've also heard how a chairperson of a judicial panel, a woman read the sentences and then commented … Starting from the Polish Constitution and finishing with emotions and all. That was fantastic. That was the judge. I am not sure if I could read a verdict like that. But this part impressed me as a judge.
>
> Judge Alex: In opposite. [*laughing*]
>
> Judge Brook: In opposite to Judge Alex. Have you recently heard our former colleague's comment in one case? I had a pre-trial detention and questioning in a murder [case] of a watchman.
>
> Judge Alex: Um.
>
> Judge Brook: I liked the comments. By the way, her comments were spontaneous when she left after [the announcement] of the verdict. Her comments were good, emotional. But I believed her. And I think that people believed her too.
>
> Judge Alex: But does the judge have to do that?[25]

Against Judge Nev's retreat to the formal rules on display, Judge Alex's disruptive sharing of a memory as antonymic of order manifests a practised humanity and awareness beyond

[25] Focus Group Discussion 2 (Lithuania, 2019) 14-15.

the self[26]. Instead of imagining an ideal as the question asked, Judge Alex expresses care about professionalism but also about a person who was condemned by the judge publicly. A fascinating contrast between the judges' reactions to the public speaking of their colleagues plays out. This contrast is surprising to the judges themselves. What created a strong bodily repulsion for Judge Alex, for Judge Brook inspired awe.

As two competing paradigms clash, I suggest that Soviet legality and justice plays out in Judge Brook's narrative. In particular, it resonates with guidance in a Soviet 1949 instruction book for adjudication whereby 'the persuasion that the decision was just and fair rather than taking the just and fair decision was considered to be the most important task of the judge'[27], but also with the later Soviet justice practice of 'public condemnation and contempt as a method of social control, crime education and prevention ... [in which] possible public condemnation of the criminal became one more aspect of punishment and a punitive measure.'[28]

In contrast to Judge Brook, Judge Alex does not embrace the control paradigm. But it would be a mistake to ignore their surprise about the disagreement, and I suggest that Judge Brook is surprised about why Judge Alex does not share his resistance to the negation of the body. But, in fact, Judge Alex does not share his shaming and social rejection of the offender. It is important how, in his second story, Judge Brook replaced the judicial shaming of the offender, which had been bodily protested by Judge Alex in her reflection, with the emotional aspect in the judicial talk. This indicates his active self-reflection during their communal meaning-making, even before Judge Alex openly prompted him to reflect on

[26] See Leiboff, above n 9, 138.
[27] Kareniauskaitė, above n 23, 190.
[28] Ibid 295.

the judicial role. In this liminal space created by the encounter, three competing paradigms get a chance to negotiate, reflect and embody a new way to relate to the self and beyond the self.

2 *Transformations: Performance vs Antitheatricality*

> The body reveals something to the self: that she or he sublimated through learning *to be decided* wrought by dealing with practices, methods and logics that are counterintuitive to that self at best, and antithetical at worst. … But one form of physicality and training into the body means that it's also possible, through training, to become habituated into the practices imbued in the theatrical antonyms to shape new intuitions, to trigger different responses based in responsiveness.[29]

In the conditions created on the tension between fiction and reality shaped by the judge shows, transformations revealed challenges to the disembodied ideal of a judge. The understanding that impartiality should not deny humanity shows how law's function was reconsidered from a formalist instrument into the relationship with the parties of the case. Judges Nole and Alex resisted body negation politics and this prompted a reshaping of the dispassionate role of a judge:

> Judge Nole: My position is that a judge should not be very formal. I mean, the judge should respond to a person. I don't mean instructing what is forbidden but also not saying how you understand them, how sad you are, how sorry you are about their misfortune. But you should not be cold, stone-faced and unresponsive. We laugh in the courtroom.
>
> Judge Andy: No, no.
>
> Judge Brooke: Because it [being cold and stone-faced] is not genuine, not genuine.
>
> Judge Nole: And we all laugh. Well, I mean if the situation is really funny, I definitely do not sit stone-faced as if I do not understand what is happening. So, my opinion is that the judge should not be completely formal.
>
> Judge Brook: Yes.

[29] Leiboff, above n 9, 39, 40.

Judge Alex: We have very formalised [court procedure]. I'd like to share my experience of participation in … England's [court] procedure. I was surprised when a judge came. They do not have to wear robes at the first instance court. Then the parties arrived. And they all sat together in the front and communicated as friends. This impressed me a lot because I saw it six or seven years ago and I thought, this is it.

Judge Nole: In the Southern [European] countries it is the same.

Judge Alex: Yes, they are like friends; they came to talk to the judge as friends. And there is this proximity. Of course, [if] you can reach more amicable settlements that would lead to the effectiveness and efficacy of your work. Because for example sometimes it is pleasant when they say: 'Judge, could you help us to agree?' So, they come, and they trust you. You are not ice-faced, arrogant, [or] vain. You sit and communicate closely. So, I think, perhaps the most important is that proximity of communication. Not coldness, formality. I am certainly against formalised court procedure.[30]

The judges collectively challenge a formal judging style, which is unresponsive and stone-faced. This demonstrates practical empathy as responsiveness, as shared laughter, as well as showing how 'for law to inscribe itself in the various bodies it turns into affect'[31]. But it is Judge Alex's transformation that marks a theatrical shift in judging practice. In line with her earlier expressed repulsion of condemnation of the offenders, here Judge Alex further de-centres attention from the judge and, by doing this, challenges the dichotomy between the authority and a subjugated, bringing change into an understanding of the relation between a court and the litigants.

Judge Alex dramatised her encounter of a procedure in an English court of first instance, prompting these experiences 'to press on our expectations and assumptions in law, and to think law differently'[32]. That is, the interplay of feelings, bodies, past and present reveals

[30] Focus Group Discussion 2 (Lithuania, 2019) 18.

[31] Andreas Philippopoulos-Mihalopoulos, 'Law is a stage: from aesthetics to affective aestheses' in Christodoulidis, Emilios; Dukes, Ruth; Goldoni, Marco (eds), *Research Handbook on Critical Legal Theory* (Edward Elgar Publishing, 2019) 217.

[32] Leiboff, above n 9, 64.

that Judge Alex's body is ingrained with an impression of a style of judging that is very different to a disciplining court environment in Lithuania. Prudence in a theatrical sense[33] here develops as a relationship of friendship, where an interplay of sympathy and proximity replaces the distance expected of an ideal judge but also uncovers that masked under the ideal of an ice face are arrogance and pride. Judge Alex is bodily returning this ideal to the past as she articulates her experience of being strongly affected and impressed around 2010. At this time, while Lithuanian legality still transitioned from uncertainty, lacked judicial competence, and applied outdated legal norms, it also started moving towards technological effectiveness of court procedure. Once Judge Alex returns the friendly relationship to the present, it becomes 'an engagement that uses the agitations of the soul to take responsibility for our practices, the actions and manifestations of our own law.'[34] I suggest this because of Judge Alex's pleasure in proximity when parties ask her help to settle as it creates trust. This trust is in stark contrast to a formal disciplining of an ice-faced ideal. This is a performance in the theatrical jurisprudence sense because Judge Alex manifests a shift from an abstract formal authority into the embodied practice of law[35].

Another instance of the shift in the understanding of a role of judge was prompted by awareness that impartiality does not require body negation. Judge Nev's understanding of the judicial role transformed through the reshaping of the impartiality as not threatened by the body:

> Judge Nev: My concern in the scope of this topic would be a signal for the public to understand us. Because in Judge Greer's talk, I detect the same subtext that a judge

[33] Ibid.

[34] Peter Goodrich, 'Inutilious Propaedeutics: Performances in Theatre and Law' (2020) 29(4) *Social and Legal Studies* 598.

[35] Marett Leiboff, 'Challenging the Legal Self through Performance' in Simon Stern, Maksymilian Del Mar & Bernadette Meyler (eds), *The Oxford Handbook of Law and Humanities* (Online Publication, 2020) 332.

> adjudicates, I don't like the word, objectively. He is impartial. He is a subject; he always passes the evidence through himself. This way he listens to the law that talks about sufficiency of evidence – whether there is sufficient evidence or not. But I decide it subjectively; impartially, but subjectively. So, this suffice for me if people understand that I am a person, subject, not some robot, impartial but personal.
>
> Judge Alex: Not an object. [*laughing*].[36]

Judge Nev's awareness about subjectivity not being in breach of impartiality prompts him to resist body negation politics. Note how Judge Nev's law is talking – it is animated from the books into orality as the judge, through the embodied self, decides on the sufficiency of evidence. In this context, the embodied practice of law is juxtaposed to a robot, and deciding in a formalist manner is problematised like Judge Brook did in the beginning of the focus group. This significant transformation of understanding about the role of the judge is in stark difference to the formalist judge. Resistance to body negation that plays out in this quote is indicative of the totalitarian body politics that persists to this day in the training methods of Lithuanian judiciary that propose judicial professionalism as a Weberian charismatic practice of detachment of the self.[37]

The implications of this demand of disembodied authority played out in Judge Greer's concern with the judicial impartiality. This concern manifested early in the focus group, when Judge Brook and Judge Andy shared a desire for the authority as seen in United States movies. The judges were impressed with a harsh punishment for contempt of court:

> When a litigant said a phrase which a judge disliked, the judge used the beckoning finger to summon him … then in front of everyone … the judge said: 'Now I amend the ruling and you will not be released'. So, my purpose is to have the court procedure like that.[38]

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[36] Focus Group Discussion 2 (Lithuania, 2019) 19.
[37] Žaneta Navickienė, Darius Žiemelis, 'The Dimensions of Judicial Profession in Lithuania: Qualification, Competence, and Personal Qualities' (2015) 97 *Teisė [Law]* 194.
[38] Focus Group Discussion 2 (Lithuania, 2019) 5.

The finger in this story marked untrammelled power for Judge Brook but for Judge Greer this gesture evoked a concern with impartiality. This finger returns in Judge Greer's imagination of the judicial public image:

> Every person has their own sense of justice, and they leave a court unsatisfied with a court's decision. So, it could be shown how judges make decisions … It's not done simply with the finger, 'Well, I don't like that one, therefore I will mistreat him'.[39]

Here, the finger instead of the former meaning of empowerment now marks the disturbing practice of a 'power over law'[40]. Hence, though Judge Greer, like the other judges, shared doubt of courts' capacity to deliver justice, and he also became aware that it has some truth to it[41]. Consequently, in contrast to others, Judge Greer's strategy was not a move towards embodied judging; instead, he chose an extreme and highly contested method to ensure impartiality:

> Judge Greer: So maybe I would add to Judge Nev's [*laughing*] impartialities. I totally agree that we are subjects, and we have both our own mood and opinion and position, but that we sometimes understand impartiality differently. Because impartiality, too, is, from my point of view, that I depersonalise, I am emotionless with each participant in a case. When I sit in a court procedure and listen, I can feel all kinds of emotions. But when I write a decision and consider evidence, I do not feel emotions to any of the litigants, not those strong [emotions], no? Because compassion can be for both.
>
> Judge Nev: You feel emotions for proof.
>
> Judge Alex: Neutralise yourself, in other words.
>
> Judge Greer: I neutralise myself; I decide and then, let's say, if it is unfavourable to someone … I feel sympathy.
>
> Judge Andy: Psychologists say that there are no decisions without emotions; it is impossible.
>
> Judge Brook: Impossible. No, no.

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[39] Focus Group Discussion 2 (Lithuania, 2019) 11.

[40] Leiboff, above n 9, 26.

[41] Cassandra Sharp, 'Finding stories of justice in the art of conversation' in Cassandra Sharp, and Marett Leiboff (eds), *Cultural Legal Studies: Law's Popular Cultures and the Metamorphosis of Law* (Taylor & Francis Group, 2015) 65.

Judge Alex: We are still human.

Judge Greer: I still in a way know how to get emotionless.

Judge Andy: No but really, a person without emotion could not do anything. Because what drives us is, well, are emotions. [*laughter*]

Judge Brook: Come on Andy, get emotionless.[42]

Here we see how Judge Greer disowns his personhood for the sake of a role as he gets convinced in court's inability to deliver justice in the face of the untrammelled power over law. But this is:

> turning away from lived experience in the face of a structured script, as an exemplary instance of legal antitheatricality, and with concomitant consequences for justice, fairness and the lifeworlds of law, and for health and well-being of those caught in its wake.[43]

Judge Greer's arduous work 'to render the body, with all of its foibles, mute'[44] is not only a diligent conformity to the laws but also an embodiment of a hybrid post-totalitarian identity, a body disciplined into a submissive subject.[45]

Comparative law scholar Manko describes the concept of hyperpositivism as 'an extreme version of classical legal positivism, mixed with elements of orthodox Marxism-Leninism, in the form created in the Soviet Union in the 1930s and exported to Central European countries after World War II.'[46] Judge Greer's hyperpositivism manifests as none other than the embodiment of a 'human algorithm'[47]. I join here the long line of persons indebted to Marett Leiboff for her generosity in encouraging me to borrow and adapt her notion of

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[42] Focus Group Discussion 2 (Lithuania, 2019) 19.

[43] Leiboff, above n 9, 57.

[44] Marett Leiboff, 'Towards a jurisprudence of the embodied mind - Sarah Lund, Forbrydelsen and the mindful body' (2015) 2 (6 - Special Issue) *Nordic Journal of Law and Social Research* 83.

[45] Inesa Kvedaraite, 'Soviet reflection in Ricardas Gavelis's short stories ('Intruders' and 'Punished' collections) (MD thesis, Vytautas Magnus University, 2019) 26.

[46] Rafal Manko, 'Weeds in the Gardens of Justice? The Survival of Hyperpositivism in Polish Legal Culture as a Symptom/Sinthome' (2013) 7(2) *Pólemos: Journal of Law, Literature and Culture* 207.

[47] Leiboff, above n 9, 6.

a ‘human algorithm’ for the continental law context. Since by refusing own humanity Judge Greer also eliminates possibility of law as sympathy[48], his law is committed to save humanity at its own expense[49].

These few examples shed light on the ways that emerging awareness of the body is transformative for judges and prompts them to challenge an ideal of a dispassionate judge and disengaged judging, but also provokes its embrace in the extreme form. The threat to judges’ ability to deliver justice challenged ‘law’s ontologies, including a spectral normativity that has its origins in a deep hostility towards theatre, out of which legal antitheatricality was shaped’[50]. The second part of the article turns to one more site of bravery. I am indebted to theatrical jurisprudence for being able to register a sacrifice of a courageous Judge Brooke who through his transgressions created conditions to respond to instrumental law and algorithmic judging.

C *Post-Totalitarian ‘poor theatre’ as Theatrical Jurisprudence*

At first, I believed that Judge Brook’s theatricalisation of a case in the end of the focus group played out as a sacrifice of the courageous judge who performed theatrical jurisprudence:

> Judge Brook: In order to make you laugh, I am not afraid even when the recorder is present. No, I am not afraid of anything. Even of the recorded! [*laughing*]
> Judge Greer: Emotions are free. [*laughing*]

[48] Leiboff, above n 9, 133.
[49] Andreas Philippopoulos-Mihalopoulos, ‘Ad Vitam Aeternam: Contract unto Death’ *JurisApocalypse Now! Law in End Times* Law, Literature and the Humanities Association of Australasia Conference Southern Cross University Gold Coast (2019).
[50] Leiboff, above n 9, 16.

Judge Brook: It is from my court procedure. A man, I am not going to reveal his name, but I know, I remember. Summertime. [He is] overweight, with a shirt with some kind of emblem. He came to the court, he rushed in. He beats his wife. It is not the first time that he has committed violence against his wife, once I or someone else suspended his sentence. So, I started explaining that it [is] not acceptable. [He is] about 55 years old. The wife says: 'You know, it's not that he drinks but he's somewhat crazy'. She says: 'He talks about the army where he was promoted to a sergeant. So, if something is not to his liking, he goes "bring me, as the sergeant, a pancake" or hits me "you know that you are disobeying the sergeant?"' And he started to misbehave in the court procedure. So, there was this problem: whether I will fine him, or I will order a temporary sentence of imprisonment. So, he keeps repeating about being the sergeant. Well, I see that he also disobeys the judge, so the court procedure is going somewhat not well. I am thinking what could be devised. I say: 'S, please rise'. I say: 'Do you know who sits in front of you?' 'No. The judge?' So, I say, and we have the recorder. Considering that I am not afraid of anything, that is not good, I repeat that for the third time, perhaps I am afraid of something, that's the logic. Alright, I [will] keep on telling the story. So, I say: 'The captain is sitting in front of you.' He turned around: 'It's impossible.' I say: 'Well, there is the recorder, I am the judge, so I won't lie. Indeed, the reserve captain.' He stood up: 'I listen, what should I do?' I say: 'Be quiet.' 'Alright, anything else?' says. [*laughter*]

Judge Nev: 'Please allow to carry out.'

Judge Brook: 'Please allow to carry out, captain.' [It] almost should be decided whether he needs a mental treatment. I have sentenced him; afterwards somebody annulled the enforcement of sentence. He telephones me: 'This is a sergeant S, captain. What would be your advice for me? You know, some judge has annulled the enforcement of sentence and wants to send me ... What do you think captain, should I now pretend to be from a nuthouse?' He means psychiatric hospital. 'Well, I don't know you should consult a lawyer.' He says: 'You know, captain, a nuthouse is not good. I will not be able to drive afterwards. Perhaps I should serve the term. So goodbye captain, until the next time.' [*laughter*] I said: 'Goodbye sergeant.' This is my case; this is my life.

Judge Alex: And what about the disorder?

Judge Greer: What is this disorder? [*laughing*]

Judge Brook: Do you understand how much I have transgressed here? If we would start discussing here to what extent and what is the reason.

Judge Andy: Well, that is beautiful. You could show that on TV. [*laughing*]

Judge Brook: You know, it is possible to write, to make a show à la comedy, a fictional court. But this was the real court. And you know when the sergeant called to consult with me if he should go to a madhouse or to a jail.[51]

I was wrong.

1 *Responding to the Total Act*

> The combination of heterogeneous matter (body, language, space, rhythm) and sensory – mental reality – which is 'illogical' according to the standards of reason yet displays a structure all the same – offers the deceptive appearance of thinking; at the same time, it calls for one to think about the deception it practices.[52]

As I resist my embodied positivist legal self, logocentrism and a strong pull towards antitheatricality, the discussion turns out not as perfect as I wish it would be – this wish is positivist as well. Nevertheless, I feel urgency in Judge Brook's drama that cannot wait so I keep finessing my skills as I go. The distressing antitheatricality of my initial thought prompted me to remember an opportunity to become aware of and to practise my responsibility as a listener.[53] So, to practise theatrical jurisprudence and to be a better listener of Judge Brook's story, I retold it and then compared my own retelling with the original Judge Brook's story. Guided by the theatrical jurisprudence, the omissions and additions that I contributed speak of Weberian and theological underpinnings of the legality of this encounter, which I will discuss now.

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[51] Focus Group Discussion 2 (Lithuania, 2019) 20-21.

[52] Leiboff, above n 9, 16.

[53] At the UOW Legal Intersections Research Centre Masterclass, 'Law, Listening and Injustice', on 20 February 2020, we retold each other's stories, and for me it was rather unpleasant experience since it exposed my tendency to rearrange *new* and *unknown* according to my prejudices and biases. Even so, I strongly appreciate this encounter and found it invaluable to fracture my embodied training in antilegality.

In the retelling of the story, one of my omissions was a notion of a 'reserve captain' perhaps as unknown and irrelevant, but also as mundane due to the persisting 'national Soviet' heroic ideal and the cult of power still present after three decades of Lithuania's freedom.[54] The strong message of leadership in Judge Brook's story resonates with other two narratives that shape Weberian legal authority but also current Lithuanian political authority. Results of a Lithuanian research fieldwork expedition comprising a part of a national election study discussed on the major Lithuanian web portal Delfi concluded that the participants imagine an ideal president as strict but caring leader, like Jesus Christ[55]. The participants of that research see the current President Gitanas Nausėda as close to the ideal. Amongst diverse comments my attention caught the ones calling for firm leadership, where one of the interviewed retirees specified that a good German is needed to create order in Lithuania[56]. Along these ideal leadership expectations of a political authority, it is important to remember that it is a demand of judicial professionalism to operate through charisma concurrently with detachment of the self[57] – a demand that was problematised in the outset of this paper and demonstrated through Judge Greer's commitment to

[54] 'The resilience of the cult of power, as well as ideological relics of Lithuanian nationalism and even Soviet utopianism in the current heroism discourse, has led to an unsettling conclusion that the process of hero-making simultaneously and repeatedly involved an exalted idealization and deep depreciation of the heroic figures and their original ideas and/or achievements and of the historical past and historical heritage in general' (Sviderskytė 2019: 76).

[55] 'Nurodė, ką žmonės iš tikrųjų galvoja apie šalies vadovą: kas skiria Nausėdą ir tobulą prezidentą ['Specified What People Really Think About the State's Leader: What Stands Between Nausėda and the Ideal President'] Voveriunaite S, Delfi.lt (online) 31 May 2021 <https://www.delfi.lt/news/daily/lithuania/nurode-ka-zmones-is-tikruju-galvoja-apie-salies-vadova-kas-skiria-nauseda-ir-tobula-prezidenta.d?id=86798245>.

[56] Ibid.

[57] Navickienė and Žiemelis, above n 37, 194.

depersonalisation and emotionlessness. In this context, Judge Brook's transgressive call against disembodied judging is like 'a signalling through the flames'[58].

Similarly, Judge Andy's challenge of conformity to the dominant narrative at the time of the focus group discussion was especially daring because right-wing populists were in power, and current polls show that their popularity is growing again. Initially, I interpreted Judge Andy's challenge to judges' courage articulated as making 'public their opinions on the abortions and the same sex marriages'[59] as a display of politics that functions like a 'reiterating device that narrates a particular account of power over law'[60]. Despite agreeing with Judge Andy that using 'the cloak of doctrine … to obscure politics, prejudice and so on'[61] would be hypocritical, I treated Judge Andy's courage as 'a threat to *logos*'[62]. A formalist judge has only one way to resist inhumane formal law – by showing courage and burning to signal the circumstances of the oppression like Judge Brook or Judge Andy did.

Such sacrifice becomes unavoidable when democracy comes under threat. An interplay of fear and voice recorder in Judge Brook's story is underpinned by politics of control through the discipline of judicial bodies. Concerns over judicial independence as expressed by Lithuanian judges[63] resonate with the wider research on judicial control in EU region.[64] The growing number of vacancies for judges is one of the factors justifying currently adopted Amendments to the Lithuanian law on courts which continues the 2018 court's

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[58] Antonin Artaud, *The Theater and Its Double,* tr Mary Caroline Richards (Grove Press, 1958) 13, cited in Leiboff, above n 9, 5.
[59] Focus Group Discussion 2 (Lithuania, 2019) 17.
[60] Leiboff, above n 9, 26.
[61] Ibid 31.
[62] Ibid.
[63] *Teismai.lt* 2020 4(40) (online) <https://www.teismai.lt/data/public/uploads/2020/12/d1_zurnalas_nr24_-210x2975mm-web.pdf>.
[64] For concerns about judicial independence in the EU region see for example, Jarukaitis and Morkūnaitė (2021); Pereira de Sousa (2020); Balicki and Juškevičiūtė-Vilienė (2021).

reform aiming to make the justice system more effective. In this context, Judge Brook and Judge Andy's resistance to disembodied law makes a space for a strong argument against the practice of law detached from the self or others because it is a deadly practice[65] that does not even require a human for the role.

Work with my omission of the notion of 'reserve captain' also helped me to notice how my lack of skills in the theatrical jurisprudence not only obscured, but participated in, a construction of an autocratic authority through Judge Brook's drama. Once again, I am challenging my ingrained legality, and to do so I borrow from Parsley's work with Agamben's critique of a construction of a person:

> The subject of Agamben's critique is a double gesture which stabilises throughout the Western tradition of theologico-philosophical constructions of the person. This gesture consists on the one hand of creating a parallel between the theatrical and the juridical, and arguing for their conflation; and on the other, in doing so, maintaining a division between the persona and the natura which is presupposed as the natural substance to which it attaches, a double gesture which founds both the juridical and moral person together.[66]

I can see this double gesture in Judge Brook's story as I focus on my omission of the notion 'reserve captain'. Approaching this role of a captain as a theatrical role, a blurring of the judicial and the military roles is visible in Brook's further articulation of 'indeed, a reserve captain' as he affirms the actuality of this parallel. I also noticed how, in my retelling of Judge Brook's story, I rearranged 'I sentenced him' into 'We heard the case, I jailed him.' Despite using the same pronoun, 'I', my addition of imagined 'we heard the case' speaks of *court's authority* in addition to *'I' authority*. Also, I replaced 'sentenced' with what in

[65] Leiboff, above n 9, 31.
[66] Connal Parsley, 'The Mask and Agamben: The Transitional Juridical Technics of Legal Relation' (2010) 1(14) *Law, Text and Culture* 25.

literal translation would be ‘seated in jail’ which I see as turning of legal into vernacular but also my reframing of a judicial task into the ordered body movements which could be seen to speak of law’s roots in religion[67] and politics of control[68]. Interestingly, in the episode where the sergeant called for some advice, and Judge Brooke distanced himself into the role of a judge by prompting him to consult with a lawyer, my only omission in the retelling was discarding such words as *well, so*, that function as a ‘noise’ that creates uncertainty. While a rule of no judicial consultations for the litigants is embodied in me, in this story it evokes morality connected to the judicial persona despite the antitheatrical drama of the captain and the sergeant.

The accused Vytas in the *Culture Court* narrative was sentenced considering contempt of the court and failure to repent, while the sergeant in Judge Brook’s story committed himself to imprisonment. In both cases their bodies become the instruments through which a struggle between politics and law plays out. The captain’s method in Judge Brook’s story proved to leave no space for resistance to this ambiguous authority. It resembles ‘political religion’, practiced under the totalitarian rule, which is driven by ‘irrational belief, emotional devotion and the ultimate attachment of the citizens.’[69]

D *Conclusion*

Initially, I believed that Judge Brook’s demand to respond instead of stopping at noticing that the law went wrong by asking ‘Do you understand how much I have transgressed here

[67] Robert A Yelle, ‘Bentham’s Fictions: Canon and Idolatry in the Genealogy of Law’ (2005) 17 *Yale Journal of Law and the Humanities* 178.

[68] Margarita Dobrynina, ‘The Roots of “Penal Populism”: the role of media and politics’ (2016) 4 *Kriminologijos studijos [Criminology Studies]*120

[69] Nerija Putinaitė, ‘Political Religion and Pragmatics in Soviet Atheisation Practice: The Case of Post-Stalinist Soviet Lithuania’ (2021) 1(22) *Politics, Religion & Ideology* 68.

and why'[70] creates a very direct and very Grotowskian call to perform theatrical jurisprudence. I thought that, as a challenge to formalist judging, Judge Brook's expressive reimagining of authority returns 'prudence [which] represents the ideal of the individual and the society advancing together rather than at the expense of each other'[71]. In this light, I noticed Judge Brook's resistance to formalism as a performance emerging from the Grotowskian transgressions that demands of law to enter into an understanding relationship with the parties of the case.

But through a critical reflexivity, emerging from the overlap of postcolonial agency with theatrical jurisprudence's demand for bodily response, I am developing awareness of my deeply antitheatrical accomplice in cultivating a drama of 'power untrammelled by law'[72]. Through the interplay of Judge Brook's story and my omissions/additions to it, I attempted to show how ignorance of a practice of sharing a cult of power and penalisation politics with Judge Brook facilitates 'the life of perpetual and absolute power'[73] and how theatrical practices of better listening and theatrical jurisprudence challenged me to notice and respond to my own reproduction of the antitheatrical legality. Without the theatrical practices I was not able to notice, challenge and respond to Judge Brook's transgressions and the circumstances of the oppression.

Perhaps Judge Brook's theatrical challenge was not an invitation to muse on the reasons and extent of his transgression. The story enabled noticing what the politics of body control and discipline mean for people as they strive to comply with a disembodied ideal. This small focus group discussion demonstrated how differently each of the judges made sense

[70] Focus Group Discussion 2 (Lithuania, 2019) 21.
[71] Leiboff, above n 9, 64.
[72] Ibid 25.
[73] Ibid.

of the challenges of law emerging through their encounter with popular culture. Deploying theatrical jurisprudence to rethink the practices of judging is important in the context of moving away from the Soviet legality but also in the wider context of transition towards the digital legalities. And reshaping of the judicial authority from the perspective of the participants is my concern in the next chapter.

CHAPTER 7

DISCUSSION

A *Introduction*

In the Introduction Chapter, I explained in-depth about the nascent rethinking of the judicial role and changing conditions of judging in the past two decades in Lithuania. This allowed me to problematise the paucity of research concerning the responsiveness of judges to the challenges of law in this state of flux. That is why this thesis builds on the demonstrated potential of the encounters between culture and law as 'a living and active jurisprudence'[1] for a practical (re)imagination of law.

In the tradition of cultural legal studies (Sharp, Leiboff 2015), I focus on the production of fictional judging in the *Court* and *Culture Court* programmes, their use in meaning-making practices by judges and media creators, and the role of fictional judging in the (trans)formation of the concept of judicial authority in Lithuania. Therefore, the concern of this qualitative study is whether and how the newly developing concept of judicial authority in Lithuania is influenced or affected by the media and television judging programmes.

In the following, I answer this question by explaining several aspects of the role played by *Court* and *Culture Court* as informed by the response of Lithuanian judges and media creators. First, I overview the key aspects of the research setting and design. This follows with a presentation of the results organised thematically to further reveal the role of culture exemplified by the research material. After my self-reflection about the

[1] Cassandra Sharp, *Hashtag Jurisprudence: Terror and Legality on Twitter* (Edward Elgar Publishing Ltd, 2022) 12. See Chapters 2 and 3.

implications of my positionality as a researcher in the interpretation of results, lastly, I draw conclusions and situate the analysis within cultural legal studies and the wider law and humanities research fields.

B *The (Trans)formation of the Lithuanian Judicial Authority Through Popular Culture*

1 *Overview*

In this section, I discuss the results. But before that I briefly revisit the key aspects of the research design and reflect on the implications of my positionality as a researcher.

In this thesis, I have revealed an aspect of instability by unpacking the transitional character of Lithuanian legality, complicated by a controversial judicial corruption scandal that happened just prior to my fieldwork in Lithuania. In unpacking the milieu, other important aspects that I considered important for the research were the iconoclastic character of the Lithuanian media, the rise of populism, and geopolitical tensions.

Since this is qualitative research, an important part of the research material consists of the experiences from the fieldwork that I conducted in Lithuania in 2019. In total, I interviewed 19 research participants, including 17 Lithuanian judges of the first instance courts and 2 Lithuanian media creators.[2]

Reflecting on the research design and my role as a researcher shaped by the relevant relationship, I must note an important role of the supervisors in the development of the research question as discussed in the Introduction Chapter. I could not have wished for a

[2] See Chapter 3 for the detailed explanation of the research design, including description of the demographics, collection and analysis of the research material.

better guidance for my research project. Even as I write this chapter, I understand how much I have learned about doing law and how much I have changed as a jurist in this process.

During the data collection stage, culturally I felt strongly Lithuanian. How this feeling underpins the dynamics of the interviews could be seen from the power relationships that I reflect on repeatedly throughout the analysis. Also, my choices in the recruitment process are clearly underpinned by my previous work experience and thus the familiarity with a culture of one particular lower instance court in Lithuania.

Regarding relationships with the television creators, I feel lucky and grateful for the assistance in recruitment of *Court's* creators. Their participation gave the current shape to this project after I had to make major adjustments to the initial research design due to *Culture Court's* creators' non-participation in the research.[3] Being aware about the possible impact of these circumstances on the research process, I had to pay particular attention to the interpersonal dynamics when interpreting the research material. Notably, as I progressed with the analysis, my awareness about the power dynamics in interpersonal relationships developed and my critical voice became more confident.[4]

Having provided this short reflection about the research design, next I discuss how the findings of this study informed my research question about the ways that media and television programmes shape the understanding of the Lithuanian judicial authority.

[3] See Chapter 3 for a detailed explanation of this.
[4] See the Chapter 1.

2 *Results and Trustworthiness*

(a) Results

The findings reveal multiple roles played by the media and television judging programmes in the developing concept of the judicial authority in Lithuania. First, I focus on the participants' use of *Court* and *Culture Court* for legal meaning making to show how popular culture could be used to prompt awareness about the changing conditions of judging, to notice implications of judging on the audiences, to encourage critical reflection. Secondly, I will bring attention to the production of judicial pictures, and illustrate how fictional images of judging bring diversity, helping to unmask invisibility in judging, promote debates, as well as mediating socialisation, while also creating possibilities for manipulation and distortion of the expectations towards the legitimate authority.

I start my discussion with a discrepant case that appears to be an outlier, seemingly contradicting the trends observed in most of the participants responses. Judge Brook's case best illuminated the role of the encounter in helping to *notice*[5] the changing conditions of judging and to encourage self-reflection in 'times of danger and during periods of turmoil'.[6] As discussed in the previous chapter, Judge Brook reflected on one of his cases at the very end of the focus group discussion. He questioned self-actions by asking why he had transgressed so much to use a risky military strategy in a domestic violence case.[7] Articulated as an irrational retort to the military hierarchies and command designed to be the epitome of reason, this recount of court procedure was not only counterintuitive but also deeply concerning, 'provoking a dangerous and transgressive

[5] Marett Leiboff, *Towards a theatrical jurisprudence* (Routledge, 2019) 109.
[6] Ibid 105.
[7] See Chapter 6.

response, initiating and provoking potential lawlessness'.[8] By creating a sense of unease, uncertainty and danger, Judge Brook's 'utterly irrational use of a set of instruments that were meant to be the very crystallization of rationality'[9] prompted me to respond instinctually to both a mode of algorithmic judging and the culture of masculinity. What Judge Brook is rebelling against becomes visible from the ways stories are used by most participants in their critique of the mediation.

Judge Brook admitted to withdrawing from the atmosphere of fear by resisting the use of a voice recorder.[10] Voice recorders were introduced to replace court records in Lithuanian courts in 2010, to ensure transparency and authenticity.[11] In the Chapter 4 analysis, I linked participants' training with their awareness of the disciplinary measures. Both Judge Brook and Judge Ride were trained before Lithuania became a member of the EU. However, in contrast to Judge Brook, Judge Ride's assigned meaning to the voice recorder was as a guardian of objectivity.[12] As I have argued elsewhere, Judge Ride's insistence that truth is absent if it cannot be found in courts, evokes an understanding of justice in crisis as a threat to the values of judicial 'autonomy, authenticity, and meaning'.[13] Here the role of *Court* to provoke response becomes visible from the interplay of truth, authenticity and meaning that guard the jurisdiction of the status quo.

[8] Leiboff, above n 5, 91.
[9] Leif Weatherby, 'Intermittent Legitimacy: Hans Blumenberg and Artificial Intelligence' (2022) 145 (49)1 *New German Critique* 18.
[10] See Chapter 6.
[11] Lithuanian National Courts Administration, 'Teismų posėdžių garso įrašai – skaidrumui ir autentiškumui užtikrinti' [Audio recordings of court hearings - for transparency and authenticity'] 28 March 2014 <https://www.teismai.lt/lt/naujienos/teismu-sistemos-naujienos/teismu-posedziu-garso-irasai-skaidrumui-ir-autentiskumui-uztikrinti/322>.
[12] Aiste Janusiene, 'Judicial authority through the experiences of crisis' (2022) 13(1) *Jindal Global Law Review* 69-86.
[13] Ibid.

The politics of authenticity as realism could be seen in Judge Ride's vision of the court image:

> You would not *really* portray the *real* work of the court. For example, voice recordings are made, each court procedure is recorded. I don't know about public broadcast of those records, that doesn't make sense. Streaming video is also not an option, but perhaps the episodes. But I suppose [it could be] educational programs about the court procedure, problems, actualities, perhaps changes in the legislation. Given a thought it could be clothed. I could not even say now, there could be even an *imitation* of a court room. But it requires, how to put it, a subtle taste. It is not for everyone…[laughing].[14]

In this comment, the work of the *real* court is tied to a voice recorder as an instrument to capture the objective reality of the court procedure. While the public education acts as a motivator for the staging of the court image, a fabrication is preferred to the actual audio and visual records of a court procedure. Notice the literary articulation of the expected staging using the metaphor of 'clothe'. It is Lithuanian phraseology, and the closest English translation could be 'to endow especially with power or a quality'.[15] Used in connection to the imagined hypothetical programme that this participant was asked to consider, the metaphor could indicate the importance attributed to the ritual staging of the image of courts. According to Judge Ride's conventions, the main expectation of such an image is a quality of rationality:

> My main demand is that a person should be intelligent. That intelligence shines through … That person would be able to talk not only about courts' actualities. But of course, judges are restricted to speaking on wider topics besides the arts and culture because judges are prohibited from involvement in the political life and have plenty of other restrictions.[16]

[14] Interview with Judge Ride (Lithuania, 2019) 5.
[15] Merriam-Webster's Dictionary (online) <https://www.merriam-webster.com/dictionary/clothe>.
[16] Interview with Judge Ride (Lithuania, 2019) 9.

A desire to reinforce the characteristic of intelligence signals rational authority. It is important to note that this vision of the court image is also shaped by the conditions of the corruption scandal.[17] By problematising freedom of speech and participation in political life, this comment shows how transparency is shaped through the entanglement of legal and political communication. Judge Ride's staging of authority reveals the concern with the politics of narration of the current events shaped by the expert communication and censorship.[18] However, informed by the experiences of crisis, Judge Ride's emotional negotiation of power with the fictional judge in *Culture Court* is both authentic and surreal,[19] thus disrupting the illusion of rationality. It illustrates that rationality and reason are constructs that depend on the particular context in which they are applied and are threatened by the proliferation of images of authority.

In Chapter 4, I illustrate the role of stories to encourage reflection on an ethics of judicial practice using Judge Monti's interview[20] where both broadcast of court procedures and voice recorders were assigned the function of ethical training. I suggest that when connected to her earlier assigned expectation of ethical transformation through a voice recorder and reality judging[21] the role of *Culture Court* in the construction of the jurisdiction of the status quo becomes understandable. Embedded within these politics of transparency, Judge Monti articulates the critique of an affective jurisdiction by letting her body speak:

[17] See Janusiene, above n 12. Also, I discuss this in the earlier chapters: in Chapter 1, I refer to the corruption scandal as one aspect of the background of this study, and then in Chapter 4, I consider how participants' responses are shaped in these circumstances.
[18] By censorship I mean Judge Ride's concern with content control articulated as 'preventing 'speaking what is not needed'. Interview with Judge Ride (Lithuania, 2019) 5.
[19] See Chapter 5.
[20] See Chapter 4.
[21] See Chapter 4 Section 1.

> I agree that in the certain cases [the jury members] could have advisory rights but certainly not the deciding rights. Because it is specific, it is a profession, so we are trained, it is a certain education. Then perhaps in general we should change our legal system. I do not know where I have wondered already but for some reason, I remembered the jury members. This is about making of the decision … I do not know how it would happen. Those people who want to play with the society, elections and so on, they can prepare but they should write very clearly how it will happen and we will do. So then maybe it will be possible to feel what is this making of decision.[22]

Judge Monti articulates a critical reflection on a long-term contested political topic of a jury institution in Lithuania as an irrational detour. Along with the Soviet legacy in picture making practices,[23] a backstage of the production of feeling of justice becomes visible. Yet here politics of pictures also reveal how the judicial body mediates antitheatrical legality through compliance.

The role of stories in animating current actualities through the semiotics of a voice recorder further becomes visible in the participants of the smallest focus group discussion. Like Judge Monti, they were also concerned with the 'real' in the critique of mediation:

> Judge Reed: [ST] *I mean* the court fiction is unnecessary.
> Judge Dallas: Yes, yes.
> Judge Reed: … the impression, image of a judge is sufficiently demonstrated in the news reporting and so on.
> Judge Dallas: Yes.
> Judge Reed: Here is real life. And the fiction should remain entertainment. But the question is: do we need it? Perhaps, from our position, we don't need it [sights]. But, well, we can't dismiss that the movies are being created for the public with their own interpretations. Then perhaps…
> Judge Charlie: Yes, I once even saw in a movie that they had to bring a certain [bribe] for someone [ST]. *Yeah, right, I thought.*
> Judge Reed: [ST] *yes, so such an impression*. And perhaps …

[22] Interview with Judge Monti (Lithuania, 2019) 7.
[23] See Chapter 4.

> Judge Charlie: A certain [bribe] had to be delivered [laughing].
> Judge Dallas: Well, now we have voice recorders, and during the evaluation of the judicial practice, the procedure of your communication in court is evaluated and voice recordings are being listened to [by the evaluators]. So, I will say, an image should be appropriate in that show if we want an entirely real representation.[24]

From the participants' reflections on the effects of such court programmes as *Court* and *Culture Court* it becomes visible how the meaning of the 'real' does not come from the Soviet legality. Here popular culture provides the meaning of the 'real'. In response to Judge Charlie's alert about the popular portrayal of corruption, Judge Dallas rethinks the authentic and transparent judicial image. Together with her reflection on the judging communication controlled by voice recorders, an entanglement of aesthetics and politics of control shape law as speech in the post-Soviet jurisdiction.

This shows how there is no distinction between real and mediated, '[t]he world of the machine is the world of rhetoric',[25] just like as previously discussed in Judge Ride's parasocial relational artefact of the feeling of power in *Culture Court*.[26] Since it works as a non-human agent by producing an authentic sense as an empty signifier, tension between transparency and opacity is amplified, and embodied meanings of impartiality become highly problematic.

The role of stories in unmasking the invisible operation of the jurisdiction can be illustrated through theatre by 'revealing law's backstage and reframing the force of law

[24] Focus Group Discussion 1 (Lithuania, 2019) 15.
[25] Weatherby, above n 9, 33. Also see Susanna Annese Mediated Identity in the Parasocial Interaction of TV, (2004) 4(4) *Identity* 371-388; Helen Wood, 'From Judge Judy to Judge Rinder and Judge Geordie: humour, emotion and "televisual legal consciousness"' (2018) 14 *International Journal of Law in Context*.
[26] See further in Chapter 5.

as farce.'[27] For example, in contrast to Judge Brook who used training in body language to reflect on his own allegedly unethical behaviour,[28] Judge Finley used rhetorical mastery for political persuasion after relating restrictions of the past to the current bodily training, Judge Finley engages me as a researcher into his performance.[29] In Chapter 4, I showed the operation of political atmosphere of the status quo through Weberian charisma[30] in Judge Finley's imagining.

Charisma as a trait of Weberian authority is accompanied by attention to the changes in judicial status and decline of the prestige of the profession. Yet, Brechtian theatricality[31] uncovers political foundations and violence of this law. In the following vision of the staged authority, despite the engineering of a program, participation of the real persons and discussion of real actualities would fulfil an educational function:

> Judge Finley: For example, a program 'The Right to Know'. Well, it concerns politics, other issues but a lawyer Šindeikis participates. Even though he has journalistic connections to magnates, they deal with legal topics and legal professionals take part. So, in such places I would see more constructive education [pause] educational function of television. Because it happens among the real people, after all. Not modelled, created situations but a real discussion that is an actuality. [That could] be a scandal, or elections or else.[32]

'Real' here is again indistinguishable from mediated – 'capillaries carry blood in both directions'.[33] Furthermore, Judge Finley's imagining of judging through the principle of the presumption of innocence animates the violence of law:

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[27] Karen Crawley 'The Farce of Law: Performing and Policing "Norm" and "Ahmed" in 1969' (2010) 14 *Law, text, culture* 265.
[28] See Chapter 6.
[29] See Chapter 4.
[30] See Chapter 1, in particular Background Section about the rethinking of judicial role in Lithuania.
[31] Crawley, 'The Farce of Law', above n 26, 248-249.
[32] Interview with Judge Finley (Lithuania, 2019)9.
[33] Fred C Alford, 'What would it matter if everything Foucault said about prison were wrong? Discipline and Punish after twenty years' (2000) 29 *Theory and Society* 140.

> Great opportunity presents the principle of the presumption of innocence. Imagine showing a story: I come to my friend, knock on a door but its unlocked. I open -nobody. Oh! [My friend] lies in a pool of blood. First reaction - I jump, what happened to you? What happened? You shake [the friend] and all, but that's it – [the friend] is dead. [You are] all covered in blood and here enters the police, called by the neighbours already.[34]

This imagining reveals how narrative, visual, and acoustic languages are used in a mediated socialisation that drives 'homogenisation and assimilation'[35] through fear. However, it also unveils the rule of power that is overtly brutal in the atmosphere of hierarchical 'panopticon or nonopticon'.[36]

In contrast to Judge Finley's embrace of charisma, Judge Kai's imagined authority seeks to imbue law with moral theology at the same time as revealing the operation of violence that is now hidden under the mask of a judge. Despite the efforts to conceal, 'the irrational lawmaking violence that marks every performance made on its behalf'[37] unveils in the next imagining. Judge Kai's staging uncovers the father's law:

> A judge should not be that outspoken, more of a listening type. And, if you looked at him, you would like to believe him even if you were on the losing side. [A word must be] final, a word must be an axe … If we can imagine an exemplary family father who is trusted by his children. The children know that the father, if you are not going to obey, might not resort to grabbing a belt, but the father's glance is sufficient.[38]

In shaping wordless yet visibly convincing authority, this imagining of authority animates the violence of law, and 'forces its audiences to acknowledge the realities of law at its

[34] Interview with Judge Finley (Lithuania, 2019) 6.
[35] Nan Seuffert, 'Shaping the Modern Nation: Colonial Marriage Law, Polygamy and Concubinage' in Aotearoa New Zealand' (2003) 7 *Law Text Culture* 187.
[36] Alford, above n 32, 128.
[37] Crawley, 'The Farce of Law', above n 26, 264.
[38] Interview with Judge Kai (Lithuania, 2019) 4.

most brutal.'[39] The shaping ideal of obedience through discipline in Judge Kai's story reveals how an inspiration for this paternal authority comes from both life and culture:

> In a film, where a judge has been selected by a producer, you actually see the right choice of the frame. Though a judge allows himself to smile or something, but you feel: well, a producer knew what the judge should be … Like the colleague who retired this year … the courtroom is laughing but his face never changes, he even looks surprised [why the litigants laugh].[40]

In this image of authority, smiling is undermining a disciplining masked impartial authority,[41] a smile is seen as a flaw. Use of stories here reveal a shaping of dispassionate judging as a mask of 'objectivity, fairness and impartiality'[42] that requires 'emotional labour'[43] from a judge. Such emotional labour can aid in maintaining the mask of objectivity offstage, whereas onstage law's 'tendency towards spectacular, emotional, and visual theatricality'[44] exposes the deception of power and legitimacy.

Focusing on the intersection between stories and impartiality as a mask, informs how popular culture can reveal the biopolitics of violence that legitimate judicial authority. After accepting culture's role in shaping a sense of justice, Judge Kai firmly rejects TV judges of *Court* and *Culture Court*:

> And say, a person who comes to the show and imagines that he will dress in a judicial gown, and imagines that he is a judge, and he will do something. So uh those qualities must be somewhere developed more [laughing] … Those are TV hosts [pause] but not the judges.[45]

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[39] Leiboff, above n 5, 71,72.
[40] Interview with Judge Kai (Lithuania, 2019) 4.
[41] See Chapter 6 how this negation of the body was challenged in the largest focus group discussion.
[42] Jeanne Gaakeer, *Judging from Experience: Law, Praxis, Humanities* (Edinburgh University Press, 2018, online version) 318.
[43] Ibid 318
[44] Karen Crawley, Kieran Tranter, 'A Maelstrom of Bodies and Emotions and Things: Spectatorial Encounters with the Trial' (2019) 32 *International Journal Semiotics of Law* 623.
[45] Interview with Judge Kai (Lithuania, 2019) 4.

Belittling language and laughter suggest superiority that in turn signals a hierarchical power struggle evoked by this encounter and challenge to authority. In favour of the internal strength of an exemplary father, Judge Kai also rejects charisma as it may be suitable for actors but not the judges.[46]

Yet, as Judge Echo's imagining of the judge illustrates, power is still here and is still a potent force, although it may have adapted itself to the times:

> Judge Echo: Certainly, impeccably dressed in costume if a man or uh tie or in a judicial dress. Say, with a judicial dress would be shown, certainly, a [male] judge or a [female] judge. But uh a tone in the talk should be calm, not like the first judge in the *sjuzet.*[47] If so, people will be scared of those courts, you understand. Well, a judge should not appear like some kind of a monster [laughing].
>
> R: [Laughing]
>
> Judge Echo: in a calm tone he should comment. And with the whole comportment, a tone of talk, uh to be in a way that rises confidence. A person would think, 'Wow that is wow – a judge is a judge. I would not be afraid of a [court] procedure, I would be less anxious if I had to participate in a [court] procedure.' Do not avoid an eye contact when talking with someone. While being interviewed or talking about a case do not look somewhere [aside] how I am bored, how I was forced to talk. Well, as I said regarding that language, correct and beautiful language, calm voice and not too complex expressions, terms, that the speaker would impress a listener. What else should I add? Give me a lead.[48]

The use of an image of *Court* to shape this imagination is overtly indicated by this participant. Judge Echo uses *baubas* [monster] to express effects of *Court's* judging on the audiences. Communication skills play an important role in pursuit of public

[46] Interview with Judge Kai (Lithuania, 2019) 4. In Chapter 5, I presented *Court* creator Sage's reflections on the judicial image informed by Weberian ideals and virtues of control.
[47] In Russian formalist narrative theory, 'three aspects of the story: fabula, sjuzet, and forma-roughly [correspond to] theme, discourse, and genre.' Jerome Bruner, 'Life as Narrative' (1987) (54)11 *Social Research* 696.
[48] Interview with Judge Echo (Lithuania, 2019) 5.

confidence and making a good impression[49] on the audience. Instead of being threatening, authority operates as intimacy through the eye contact, tone, and beautiful language. This suggests that 'law's backstage'[50] as uncovered by *Court* is resisted.

However, Judge Echo firmly denied any influence of *Court* and *Culture Court* on her and asked for further guidance. The articulation of *sjuzet* indicates a semantic genre approach to the clips.[51] I suggest that appreciation of direct eye contact and a calm tone is a response of law 'as a mode of theatre that disavows its own theatricality'[52] to the mediation of judicial authority in *Culture Court* as a relational artifact[53] that produces an authentic sense of justice.

I suggest that this is an example of how an entanglement of authenticity and intimacy in a discourse on judicial standards play an important part in the perpetuation of the paternalistic jurisdiction of the status quo. In contrast to other occasions where authority becomes meaningful through fear, this judge expressed her interest rather than contempt towards *Court* or *Culture Court*. But while Judge Echo resisted a sense of justice grounded in fear, her concern with the compliance to the judicial standards unmasked an unconscious national image of authority. It is important because those participants who responded with interest to the shows have not developed a sense of justice in crisis. Instead the encounter challenged to disrupt this atmosphere, and prompted emancipation

[49] Judge Echo uses a word derived from a German word '*imponieren* – rise respect, make a positive impression, appealing' (*Tarptautinių žodžių žodynas* [Dictionary of International Words] (Vilnius, 2013), 347.
[50] Crawley, 'The Farce of Law', above n 26, 265.
[51] See Chapter 5.
[52] Karen Crawley, 'The critical force of irony: reframing photographs in cultural legal studies' in Marett Leiboff and Cassandra Sharp (eds), *Cultural Legal Studies: Law's Popular Cultures and the Metamorphosis of Law* (Taylor and Francis, 2015) 184.
[53] See Chapter 2 Section 3 for my explanation of a *relational artefact* that I borrowed from Weatherby, above n 9.

of the judicial self, more inclusive law or even a radical shift in understanding of judicial authority.[54]

Finally, even though the focus of this study was not judicial decision, the concept of judgment plays important role in my exploration of judicial authority and its portrayal within visual culture. Leiboff's (2015) assertion that neglecting the influence of extraversion denies the essence of law highlights the idea that publicly available decision-making is not isolated but integral to the legal experience of a community. From this perspective, Judge Monti's reflections reveal the evolving nature of judgment, emphasising the shift from passive spectatorship to active participation. Contextualised within the broader legal and cultural lawscape, this evolution of judgment unmasks how historical legacies shape contemporary legal expectations. The use of judicial images reveal how imagery can be used to control access and interpretation, resonating with the Soviet methods of indoctrination.

Within the study, discussions among Judges Charlie and Gill, and Judges Nev, Alex, and Brook further illuminate the complexities of judgment and its portrayal. These conversations draw attention to the theatre within court proceedings, highlighting the trans-jurisdictional intersections between formal procedural norms and the symbolic aspects of judicial actions. These conversations reveal how visual representations in *Court*, including elements like regalia and posture, prompt reflections on the alignment of visual culture with the reality of judicial practice. Judge Brook's insightful question

[54] See Chapter 6 for the rethinking of the role and Chapter 5 for Judge Alex's use of popular culture in this rethinking.

about the purpose behind certain formalities points to the ambiguous relationship between dramatic aspects of judgment and their underlying meaning.

In this context, theories on judgment take on added relevance. Lithuanian judges' reflections on visual culture and judicial authority invites further investigation into interplay between the visual representation of legal practices, decision-making and authority. One example could be Judge Brook's observation about announcement only in the name of another speaks to the separation of the decision's responsibility and the judge's self.

My examination of decision making within the context of visual culture and judicial authority offers valuable insights how law is shaped in the everyday meaning making practices. Judges' competing perspectives enrich the understanding of how judgment is understood, performed, and portrayed. This deeper comprehension not only sheds light on the changing nature of everyday legal practices but also invites discussions about the potential for transformative change in law, fostering a more inclusive and reflective legal system. Cultural legal studies thus act as a vibrant avenue to explore popular decision-making as living law, connecting its past, present, and future to the pulse of society.

(b) Trustworthiness

In the interpretation of research, I reflect on my positionality or 'a place from which to speak'.[55] With this reflection I want to shift from a cover of objectivity to the subjective (but responsive) practice of research. My belief is in more than one available interpretation,[56] and I recognise that the position of the qualitative researcher is a position

[55] Olivia Barr, 'A Moving Theory: Remembering the Office of Scholar' (2010) 14(1) *Law Text Culture* 41.
[56] See Chapter 3.

of power (Bloomberg, Volpe, 2019) that demands responsiveness and responsibility (Barr, 2010; Leiboff, 2020). For this reason, I am committed to give my best abilities in deeply contextual considerations, I am guided by respect to the participants and stay open for critical feedback and change. Part of this openness is to approach trustworthiness through a reflection on the four criteria proposed by Bloomberg (Bloomberg, Volpe, 2019).

Establishing trustworthiness in qualitative research is important to assess the value of the study (Bloomberg, Volpe 2019) and I reflect on several strategies to do this. One of the strategies is to address confirmability by situating findings within the existing research, and I do so by referencing literature relevant to this research throughout the thesis. Other criterion that builds trustworthiness of the qualitative research is credibility, and in this thesis, it is demonstrated by the extended engagement with the research material,[57] as well as two publications in the peer reviewed journals. Multiple self-reflections about my assumptions spread throughout the thesis stemming from life and legal training in Lithuania, a subsequent move to Australia, and exposure to critical practices of law, also seek to strengthen credibility of the research.

One more strategy used to address trustworthiness in this study through the criterion of credibility is triangulation. Importantly, employing both judges and television creators in the exploration of (trans)formations of the judicial authority through popular culture offers diverse perspectives on the legal phenomenon. Therefore, a comparison of the competing perceptions enables original insights about the (trans)formation of the judicial

[57] See Chapter 3.

authority. In this sense, the research builds on Moran's et al (2010) seminal study and sheds new light on the contextual study of judicial performance in the Lithuanian setting.

My research material was further diversified with two forms of data collection. Besides conducting both interviews and focus group discussions, I also constantly reflected on my role as a qualitative researcher. These dynamics enabled me to highlight the importance of interrelation with the research participants and build on the existing research (Leiboff, 2013; Sharp, 2015).

Finally, particular attention must be paid to the research context that I provided in Chapter 1. Since this research generates unique findings embedded in the certain setting due to the qualitative nature of the research, instead of generalisations, more fitting is the application of findings to other comparable environments. This is known as transferability strategy (Bloomberg, Volpe, 2019).

Having explained the impacts of my results and trustworthiness, in the next section I draw conclusions, reflect on limitations of this research, and propose recommendations relevant to these findings.

3 *Conclusions, Limitations and Recommendations*

In the previous section, I illustrated several ways that *Court* and *Culture Court* play a role in (trans)forming the understanding of the Lithuanian judicial authority. In this section, I interrogate what these findings mean more broadly and evaluate how the findings fit within the existing research.

(a) Production of Judicial Images and Theatrical Challenge

My analysis shows how the production and proliferation of judicial images amplifies the issue of who controls what is being made visible as developed by Moran (2021). I link Moran's transparency and visibility of judicial symbols with the technization of authority as illustrated in my analysis of the participants' use of the court's gavel.[58] Moving this approach from common law to the post-Soviet civil law context generates new insights by revealing how technization of judicial authority operates through transparency that also obscures the lifeworld. I suggest that these findings contribute new insights because they prompt awareness about the growing visibility of judging and its implication on law by making visible what has been invisible, but also at the same time revealing the desire to control this image, as discussed next.

The use of judicial image to mediate the rule of law and citizens as illustrated by Judge Finley or Judge Ride above, reveals how in public legal and political debates participation of certain participants is preferred to the exclusion of others. The desire for a more diverse participation in the public debates underpinned Judge Jo's critique of *Culture Court* at the end of our interview.[59]

Another aspect of the impact of the production of fictional judging in *Court* and *Culture Court* on Lithuanian judicial authority is the diversification of the image of judging and making visible what was invisible as illustrated by the tension between dominant culture and resistance to it. This tension illustrates how interpretation of visual culture is guided by the body of interpreter, and how cultural legacy shape ways of seeing.[60] I suggest that

[58] See Chapter 5.
[59] Interview with Judge Jo (Lithuania, 2019) 10.
[60] Leslie J Moran, *Law, Judges and Visual Culture* (Taylor and Francis, 2020) 5.

Judge Brook's resistance to the dominant culture unmasks operation of atmosphere of the status quo through transparency that is 'continuous with the basic semantic operation of communication in general'[61] but also 'general features of the political culture(s) in the region, surviving from the socialist era or even from pre-1945 times.'[62]

Compared to Judge Finley's longing for public 'silence as gold',[63] rhetorical dependence on the intertwinement of law and political culture brings new insights about the juridical soundscape (Parker, 2011) as was evidenced in my discussion of the silence of the gavel.[64] Alongside listening to silences, relational participation contributes to a better responsiveness when compared to objective judgment that demands body negation through impartiality. This argument is based on my evaluation of the reimagining of judging through popular culture by Judge Echo and Judge Alex.

Examples of Judge Echo's (re)imagining of judging showed how the use of stories can facilitate an unmasking of the invisible unconscious national image (Villez, 2010). However, Judge Alex resisted and reoriented this image through the theatrical by noticing what law cannot (Leiboff, 2022). Considering this, I suggest that judging as a relational participation means inclusiveness in the case-by-case decision-making 'on a surface of flat ontology'[65] as 'a strategic rupture'[66] proposed by Judge Alex to challenge the hierarchical universal standard and adherence to objectivity.

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[61] Weatherby, above n 9, 33.
[62] Péter Cserne, 'Discourses on Judicial Formalism in Central and Eastern Europe: Symptom of an Inferiority Complex?' (2020) 28(6) *European Review* 888.
[63] Interview with Judge Finley (Lithuania, 2019) 6.
[64] See Chapter 5.
[65] Andreas Philippopoulos-Mihalopoulos, 'The movement of spatial justice' (2014) *Mondi Migranti 6.*
[66] Andreas Philippopoulos-Mihalopoulos, *Spatial Justice: Body, Lawscape, Atmosphere* (Routledge, 2014) 11.

Together with Judge Brook's and Judge Gill's[67] resistance to the abstracted role of the judge, these results highlight the importance of a trusting direct hypersocial rather than parasocial mediation of the conflicting interests. As such in the next section, I discuss the implications of these results for practice and research.

(b) Recommendations for Research and Practice

In Chapter 1, I explained that before each interview and focus group discussion I had showed the montage of *Court* and *Culture Court* excerpts depicting the announcement of the fictional verdicts. Importantly, it challenged judges when they perceived the verdict as obscuring the process, and this calls for attention to the difference between adversarial and inquisitorial procedure. In an inquisitorial procedure (for example, in Lithuanian criminal procedure but not as pictured in the *Culture Court* excerpt) both facts and law, procedure and verdict are under the authority of a judge. This contrasts with an adversarial procedure, especially where a jury plays a significant role in the justice process (not yet the case in Lithuania).

Awareness of this difference enables critique of technization as a way to reduce judging from authority for legal dispute resolution to a mere function. This operates by skipping the formation of meaning of judging as a sum of verdict and procedure designated to resolve a conflict between the interested parties. Importantly, it reveals the potential of the intervention of a jury in the instrumental judiciary that perpetuates legacy of the 'telephone justice'.[68] Also, this draws attention to the problem of misalignment between

[67] About Judge Gill's theatrical challenge to the disembodied judging see Chapter 5.

[68] See Chapter 6; also Matej Avbelj, 'Transformation in the Eye of the Beholder' in Michal Bobek, Jeremias Adams-Prassl (eds), *Central European Judges Under the European Influence* (Bloomsbury Publishing (UK), 2015); Kathryn Hendley, 'Resisting Multiple Narratives of Law in Transition Countries: Russian and beyond' (2015) 40 *Law & Social Inquiry* 531; about 'telephone justice' in media, see Žygintas Pečiulis, *Vienadienių drugių gaudymas* [*Catching one-day living butterflies*] (Žygintas Pečiulis, 2012) 122

the appearance and actual insight driven by judicial visibility (Moran, 2020), and the potential of inclusive practices in the development of automated decision-making procedures[69] alongside the transparency and authenticity politics of judicial control.[70]

In Section 2 of this chapter, I illustrated the operation of a mask to deny body, also the technologies engineered to control judicial bodies, such as telephone calls, voice recorders and cameras, and resistance to this control. Operation of a mask within this context manifested as a circular construction of authority and its subject through mediation. As illustrated by creator Sage, staging of the authority in *Court* was produced in line with 'the philosophical generally …[that] deeply shapes law's negation of the body.'[71]

However, looking closer 'the bodily on display in judgment'[72] became visible in a variety of shapes. With the tools and guidance of theatrical jurisprudence (Leiboff, 2019) I was able to reveal how fictional TV judging challenged the rationality of authority. This was illustrated with interrogation of reactions and responses to *Court* as sensorial disruption[73]

(Lithuanian only). Also, concerns are raised about a possible form of a jury institution. See for example Simona Dementavičienė, 'Should The Constitution Be Amended To Introduce Public Participation To Courts: If So, To What Extent?' (2020) 8(2) *Contemporary Research on Organization Management and Administration* 6 – 31.

[69] For example, at University of Technology Sydney (UTS) soft launch of UTS Human Technology Institute, Dr Alondra Nelson stressed the importance of 'the fair, accurate and accountable use of technology, and become an authoritative voice in Australia and internationally on responsible technology. Led by Professors Edward Santow and Nicholas Davis, HTI will bring together the best of academia, industry, government and civil society to demonstrate how human values like fairness and respect can be embedded in new technology.' Livestream: Humanising technology with Dr. Dr Alondra Nelson via Zoom on 1 September 2022.

[70] See for example Moran, above n 56; Rasa Žibaitė-Neliubšienė, 'The Judge as an Impartial Subject in Criminal Proceedings: The Case of Lithuania' (2019) 5(1) *International Comparative Jurisprudence* 99; recent problematisation of a mediated image Rimantė Gaičevskytė-Savickė, 'Deviant Women in the Media: Between Reality and Fiction' (2021) 9 *Kriminologijos studijos [Studies of Criminology]* 129–150 (Lithuanian only).

[71] See the analysis in Chapters 4 and 5; also Leiboff, above n 5, 84-85.

[72] Leiboff, above n 5, 31.

[73] See Chapter 5.

by creator Sage, Judge Ride and Judge Finley.[74] In the conditions of crisis, Judge Brook's performance challenged this legality where not only does the body of the judged play a role in determining outcomes, but it also serves as a vehicle for enacting and signalling power. While denial of the body unmasked law's violence, the authority in a mode of liveliness prompted to notice tensions between politics and rule of law, privacy, trust and the politics of judicial image, bodily responsiveness and impartiality, calculation and judicial discretion, as well as image of authority and gender.

The critique of technization of aesthetics where an image is a result without process, enables a disruption of a Foucauldian power operation. In Judge Alex's reimagined alternative legitimacy, impartiality means sharing authority not with the government but with the participants of the case. As an embodied practitioner she calls towards decentralisation and thinking about the practices of inclusive participation instead of rational poetics of coercion and violence constructed through the atmospheres of difference and hierarchies.

This impartiality as a mask in a phenomenological sense was challenged theatrically by Judge Brook's use of military strategy to critique the human algorithm, showing how calculation operates as an embodied experience and sociological empathy. It builds on understanding of parasocial interaction (Annese, 2004; Moran, 2020) by unpacking phenomenological mediated belonging through embodiment of language grounded in the interpersonal '"relationships," … which comprise action and interaction, and which belong to the linguistic world of the learner'.[75] This way, unpacking interactions between

[74] See Chapter 5.
[75] Maria Bondarenko and Liudmila Klimanova, 'Pathways to digital L2 literacies for text-based telecollaboration at the beginning level' in Ekaterina Nemtchinova (ed), *Enhancing Beginner-Level*

space and bodies that inscribe law into responding bodies, adapted ethnography and 'circuit of culture' (Sharp, 2015, 2022) enabled exploration of judicial authority as an image of power constituted in the minds.[76] Exploration of technization is in line with the methodological framework of adapted ethnography (Sharp, 2015) and it builds further understanding about the embodiment of cultural meanings as one aspect of the embodiment of legal meaning. It also builds on the studies of operation of the desires of law (Sherwin, 1996; Sharp, 2015), and in particular – manipulation through a desire to belong (Philippopoulos-Mihalopoulos, 2019).

Here I want to elaborate how with this research I attempt to position myself within the realm of cultural legal studies methodology, where the interaction of cultural legal studies with critical legal studies allows me to articulate what was previously beyond my grasp.

This inquiry into the transformation of judicial authority and its portrayal within *Court* and *Culture Court* illustrates the essential role that cultural legal studies play in challenging established norms and revealing hidden dynamics. My focus on inclusive participation and sharing authority aligns with the critical legal studies tradition's emphasis on questioning dominant structures and promoting justice and inclusivity. And while engagement with decolonial aesthetics and the critique of technization reflects critical legal studies' commitment to unveiling power dynamics and their impact on legal practices, the methodological framework is enriched by integrating notions of spatial justice, movement, and jurisography.

Foreign Language Education for Adult Learners: Language Instruction, Intercultural Competence, Technology, and Assessment (Taylor & Francis Group, 2022) 154.

[76] Arun Sagar, 'Law and crisis: Conjunctions, correlations, critiques' (2022) 13(1) *Jindal Global Law Review* 2.

The incorporation of jurisography, as introduced by Genovese and McVeigh (Leiboff and Sharp, 2015), reinforces the study's commitment to contextualising legal phenomena within historical and cultural trajectories. The concept of 'jurisography'[77] involves writing jurisprudence through history, offering a contextual lens to understand legal phenomena. This aligns with cultural legal studies' emphasis on exploring histories, trajectories, and actualities of law.

The aim of invoking the concept of spatial justice as articulated by Philippopoulos-Mihalopoulos (2014), is to explore the spatial relationships within popular legal culture and reflect on their implications. The emphasis on challenging the notion of a disembodied ideal jurist speaks to the transformative potential of theatrical jurisprudence (Leiboff, 2019). By unmasking power dynamics and hierarchies within both legal culture and visual culture, this research aligns with the cultural legal studies' commitment to advocating for inclusive law and legal practice.

Moreover, the movement, as highlighted by Barr (2010), helps emphasise the dynamic nature of legal culture and my positionality as researcher, encouraging a perspective that goes beyond static interpretations. This is consistent with the original methodological framework of adapted ethnography (Sharp, 2015). Together, these methodological components collectively comprise the study's approach, positioning it within the broader discourse of cultural legal studies.

[77] Ann Genovese, 'Critical Decision, 1982: Remembering Koowarta v Bjelke-Petersen' (2014) 23 *Griffith Law Review* 1-2, cited in Cassandra Sharp and Marett Leiboff (eds), *Cultural Legal Studies: Law's Popular Cultures and the Metamorphosis of Law* (Taylor & Francis Group, 2015) 9.

This exploration of judicial authority's transformation through visual culture and its emphasis on the contextual dimensions of law contributes to a nuanced understanding of legal practices and their impact. Through its interdisciplinary approach and critical insights, this thesis highlights the essential role of cultural legal studies methodology in challenging established norms and promoting a more just and inclusive legal practice.

Shaping of Lithuanian judicial authority unpacked as a tension between the bodies perpetuating aesthetics of the jurisdiction of the status quo and the resistant bodies which are entangled in the relational practices, challenge 'the notion of a disembodied ideal jurist'.[78]

As a way of thinking to disturb hierarchical jurisdiction, I overtly recognise dropping my own mask in this thesis. This unmasking[79] is possible only due to my current positionality as a researcher. Due to my commitment to the 'office of scholar'[80] now I notice injustice differently – within many laws. My reflections show a discovery and first attempts to embrace the potential of the theatrical law. Also, my understanding of law as representative practice shifts to an understanding of law as a cultural theatrical practice. This way the study responds to the theatrical demands of reorientation from a rational mind to body and contributes new insights to the field of theatrical jurisprudence (Leiboff, 2019).

[78] Sean Mulcahy and Marett Leiboff, 'Contents & Introduction, Law Text Culture' (2021) 25 *Law Text Culture* 6

[79] Marett Leiboff, 'The Main Thing is to Shut Them out - The Deployment of Law and the Arrival of Russians in Australia 1913-1925: An Histoire' (2011) 15 *Law Text Culture* 253.

[80] See Chapter 1.

4 *Limitations and Further Research*

It is important to note that this thesis revealing the cultural formation of Lithuanian judicial authority in a moment in time as jurisprudence is a work in progress. However, one limitation of this research is my training in a formal application of abstract norms and lack of knowledge about the operation of mediated socialisation and a desire to belong that prompted me to respond to the rhetorical strategies of jurisdiction of the status quo. On one hand, lack of information enabled me to challenge this jurisdiction by asking questions in a 'minor jurisprudence'[81] style that allowed me to unmask backstage of the rational law.[82] On the other hand, this interrogation demanded significant intellectual and time resources that exceed the limits of this study. This did not allow me to unpack the participants' responses in further detail to clarify the manifested roles of *Court* and *Culture Court* in shaping understanding of judicial authority. Another limitation of this research is that despite my intention, I could not observe the filming process of *Culture Court* because it was no longer made at the time of my fieldwork. As *Court* creators' provided insights that I could compare with the judges' responses, the study was able to contribute to an understanding of the circularity of law and culture that builds on Sharp's (2022) research. This indicates the need to include various cultural creators in the research practices and draws attention to the importance of a trusting relationship both in being a judge and in being a qualitative researcher.

In a similar vein with Judge Alex's imagined shared authority with participants of the case, future research could also be conducted as a participatory practice. In a research

[81] Peter Goodrich, Advanced Introduction to Law and Literature (Edward Elgar Publishing, 2021) 149.
[82] In Chapter 2, I have explained jurisliterature's (Goodrich, 2021) interest in an intersection between images and rational reason in common law.

context, shared authority could be unpacked as a 'co-creation of knowledge'[83] that is beneficial to challenge unconscious assumptions and to make research results more relevant both for the practitioners and the researcher(s). One way to do this is a:

> dialogue that defines the interview process itself and the potential for this dialogue to extend outward-in public forums, radio programs, dramatic productions, publications, and other forms-toward a more broadly democratic cultural practice.[84]

A need for various connections was voiced in this research by several participants. Besides training in management or projects involving debates and networking among judges, journalist and wide audiences could be beneficial in dealing with changing realities of judging.

Arguably, this sharing of authority is particularly important in the research practices that involve marginalised research participants.[85]

C *Conclusion*

This qualitative study explored whether and how media and television judging programmes have an impact on Lithuania's newly emerging concept of judicial authority. In this final chapter of the thesis, I answered the research question by using the results of the qualitative research material to illustrate several ways that television judging programmes and media are complicit in the (trans)formation of the judicial authority in Lithuania. My argument was that while media invites debate about challenges of judging in changing conditions, demand to negate judicial body suppresses resistance to

[83] Bruno Américo et al (ed), *Qualitative Management Research in Context: Data Collection, Interpretation and Narrative*' (Taylor & Francis Group, 2022) 124.
[84] Sharlene Nagy Hesse-Biber and Patricia Leavy, *The Practice of Qualitative Research* (SAGE, 2. ed., 2011) 70.
[85] See, for example Michelle Kennedy, et al, 'Decolonising qualitative research with respectful, reciprocal, and responsible research practice: A narrative review of the application of Yarning method in qualitative Aboriginal and Torres Strait Islander health research' (2022) 21(1) *International Journal for Equity in Health* 1-22.

perpetuation of the jurisdiction of the status quo. The research design proved to be highly successful in answering the research question. Despite the limitations of this study, ethnographic participatory legal research is enthusiastically invited.

Importantly, this research has revealed how certain habits and sensibilities that are commonly regarded as *natural* or *normal* within legal culture play a critical role in impeding the much-needed transformations within the legal, political, social, and economic spheres. I suggest that these changes are essential for fostering more inclusive, diverse, and responsive legal frameworks and practices, therefore further work will address efforts to diversify participation in the legal landscape.

Such established norms can contribute to the exclusion of certain participants from public legal and political debates, as exemplified by instances like Judge Finley or Judge Ride. Their preferences for specific contributors' participation reflect a deeper societal bias that must be acknowledged and dismantled for meaningful change to occur.

The exploration of judicial images as tools to mediate the rule of law and citizens' participation revealed the inherent power dynamics at play in shaping legal authority. Judge Jo's critique of the *Culture Court* calls for a more diverse participation in public debates, challenging the dominance of particular voices and perspectives. This highlights the need to transcend the conventional boundaries that have upheld the established norms and open the discourse to broader, more inclusive discussions.

The diversification of the image of judging, as demonstrated in *Court* and *Culture Court*, carries insightful implications for reshaping judicial authority. By making visible what was previously invisible, this diversification disrupts the dominant cultural narrative and introduces new dimensions to the discourse. This tension between the dominant culture

and its resistance underscores the complex relationship between visual interpretation and the cultural legacy, highlighting how these factors shape our perceptions and understanding of legal phenomena.

In the context of legal transformation, the role of changing perceptions of judicial authority is substantial. As the study suggests, relational participation stands in stark contrast to the traditional notion of objective judgment that often demands a negation of the interpreter's body through impartiality. This shift towards relational participation means a departure from rigid and impartial legal stances towards a more dynamic, inclusive, and responsive engagement. It is through these evolving perceptions of judicial authority and participation that the law can be profoundly transformed.

By recognising the impact of visual culture, diverse participation, and more responsive approaches to judgment, legal scholars can contribute to a more inclusive, just, and adaptable legal practices that align with the diverse needs of a society and facilitate meaningful change.

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