



The Symbolic Life of Courts: How Judicial Language, Actions, and Objects Legitimize Credibility Assessments of Asylum Appeals

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Abstract

Asylum determinations are highly complex and difficult decisions. At the heart of this decision lies a credibility assessment of the asylum claimant's narrative, which confronts the decision-maker with a seemingly straightforward question: do I believe this person's story? To uphold legitimacy of this assessment, semi-legal criteria have been established internationally. However, these criteria have been criticized for relying on inaccurate and simplistic assumptions about human behavior, autobiographical memory, and communication. In light of this contestation, I ask how the legal-administrative practice of assessing credibility of asylum applications gains legitimacy in the eyes of the public, policy-makers, and legal professionals despite resting on highly disputable assumptions? To answer this question, I draw on interviews, observations, and written judgements from the Swedish administrative courts to explore how symbolic messages are tacitly conveyed through the use of judicial language, activities, and objects. The analysis suggests that cohesive, albeit tacit, messages about credibility assessments being accurate (rather than arbitrary), objective (rather than subjective), professional (rather than lay), and just (rather than unjust) are produced to both near and distant audiences. The study contributes to the literature on credibility assessments by offering a theoretical perspective that can unpack the relationship between symbolic communication in courts and perceived legitimacy for disputed practices within asylum determinations and migration control.

Keywords Asylum determinations · Credibility assessments · Administrative courts · Legitimacy · Symbols · Rituals · Sociomateriality

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Introduction

Asylum decisions are very complex legal-administrative decisions. They are based on events that occurred in places far away from the decision-makers, and reliable documents to support asylum claims are often missing (Rousseau et al., 2002; Crépeau & Nakache, 2008; Thomas, 2011). Moreover, asylum determinations should be based not only on what has happened but also on the likelihood of future risks of harm, an approach that requires decision-makers to use hypotheses and probability theories (Noll, 2005). Because decision-makers and asylum seekers seldom share the same language, every communication between them is translated by interpreters, adding an extra layer of uncertainty to the communicative process (Gibb & Good, 2014; Dahlvik, 2019; Nikolaidou, Rehnberg & Wadensjö, 2022; Wadensjö, Rehnberg & Nikolaidou, 2022).

Besides these geographical, epistemic, linguistic, and temporal complexities, decision-makers are required to determine asylum claims by assessing the credibility of the asylum applicants' oral narratives, as these narratives often are the basis for asylum decisions. At the heart of this assessment lies a seemingly straightforward question for the decision-maker: do I believe this person's story? What makes this complicated is that the decision-makers cannot refer to gut feelings, intuition, or hunches to answer this question and still uphold legitimacy of the procedure. Instead, they have to refer to established criteria for credibility assessments, originating from the semi-legal guidelines of the United Nations High Commissioner of Refugees' Handbook (UNHCR, 2019). Based on these criteria, the following indicators of credibility have been established within the EU: sufficiency of specificity and details; internal consistency of the oral and/or written material; consistency of the applicant's statements with information provided by family members or witnesses; coherency with what is generally known about the countries of origin; plausibility; and demeanor (UNHCR, 2013).

However, these indicators have been criticized for relying on inaccurate and simplistic assumptions about human behavior, autobiographical memory, and communication. In addition to the criticism voiced by legal practitioners and refugees themselves against the credibility assessments, a growing body of academic research in various disciplines has questioned the assumptions underpinning the assessment criteria for credibility as well as their application in practice (see for example Anker, 1990; Barsky, 1994; Blommaert, 2001; Rousseau et al., 2002; Kagan, 2002; Granhag, Strömwall & Hartwig, 2005; Noll, 2005; Bohmer & Shuman, 2008; Berg & Millbank, 2009; Sweeney, 2009; Pratt, 2010; Herlihy, Gleeson & Turner, 2010; Jubany, 2011; Fassin & Kobelinsky, 2012; Johannesson, 2012; Hedlund, 2017; Gill & Good, 2019; Smith-Khan, 2020; Affolter, 2021; Määttä, Puumala & Ylikomi, 2021).

One might think that this critique would undermine the legitimacy of these credibility criteria and spark a discussion about alternative ways of determining asylum. Over the years, UNHCR and other judicial bodies have instead responded by formulating more detailed and standardized guidelines which, nevertheless,

continue to be built on the same assumptions about human behavior, autobiographical memory, and communication (Sorgoni, 2019). In light of this development, I argue that it is time to redirect the scholarly interest to the question of *legitimacy* and to consider how and why credibility assessments continue to be perceived as a legitimate method of determining refugee status in advanced legal-administrative systems. In this article, I therefore ask how the legal-administrative practice of assessing credibility of asylum applications gains legitimacy in the eyes of the public, policy-makers, and legal professionals despite resting on highly disputable assumptions?

Empirically, this paper relies on an ethnographic study of the Swedish administrative courts, including a qualitative analysis of written court judgements concerning asylum appeals. The ethnographic method is often used to grasp symbolic dimensions of meaning as it enables the researcher to immerse in the specific context where meaning constructions are produced and, by that, reach a deep understanding of the worldviews and perceptions of the studied participants (Schatz, 2009). The Swedish administrative courts are advantageous for empirical analysis of tacit communication of legitimacy due to their contemporary function in the Swedish asylum system. Special units at the largest administrative courts,¹ called Migration Courts, are responsible for reviewing whether the asylum decisions taken by the Swedish Migration Agency (first instance decision-making) follow laws and procedures. However, the courts are not only assigned to review whether the decision from the Swedish Migration Agency is procedurally correct; the courts are also assigned to re-assess the applicant's credibility. They do this by referring to the standard criteria for credibility assessments of asylum claims, following the UNHCR Handbook (Thorburn Stern & Wikström, 2016). Therefore, the Swedish Migration Courts' procedures become important arenas for legitimation of the established criteria for assessing credibility as well as the disputed assumptions underpinning these criteria.

The outline of this article is as follows: first, I describe the main problems found in previous research on credibility assessments in asylum determinations. After concluding that these assessments rest on controversial assumptions about behavior, communication, and autobiographical memory, I turn to interpretive theories of legitimation processes and discuss how these theories can be used to analyze tacit communication in court procedures. I then present the methodology of the study and what kind of data I have used. Next, the results of the interpretive analysis are presented in three sections, targeting: (1) language style and terminology in court judgements; (2) rituals in oral hearings; and (3) symbolic meanings attached to legal casefiles. I conclude the article by summarizing the main findings and their implications before I sketch the contributions this interpretive study offers to the literature on asylum determinations.

¹ The administrative courts in Sweden are appellate organs: they review public authorities' decisions in many questions related to citizens' freedoms and entitlements, for example, welfare benefits, taxes, and driver licenses.

Contested Assumptions Underpinning Credibility Assessments

As stated above, the scholarly critique against credibility assessments of asylum claims has been growing during the last decades and is coming from scholars in diverse disciplines, such as cognitive psychology, sociology, and sociolinguistics. Together, these scholars have pointed out serious inconsistencies, contradictions, and simplistic assumptions underpinning these assessments.

Legal scholars tend to call for more standardized procedures and legal oversight to solve the uncertainties in these assessments. For example, they recommend “disregard[ing] entirely demeanor in credibility assessment” (Kagan, 2002, p. 380) and to remind “decision makers that the question is not whether *they* believe the applicant, but whether there is a reasonable basis for the applicant to be believed” (Sweeney, 2009, p. 706, emphasis in original). These recommendations presume that it is possible to separate subjective and objective factors when assessing the credibility of an oral narrative and it rests on a “positivist illusion that finding yet more technicalities, or refining existing ones, will eventually render the screening of human beings ‘objective’” (Sorgoni, 2019, p. 234).

For scholars with ethnographic perspectives on asylum determinations, the subjectivity/objectivity dichotomy becomes meaningless, as legal-administrative decision-making is viewed as a complex practice of rule-following *and* discretion, rational reasoning *and* emotional management, and deliberative choice *and* unconscious impulse (Pratt, 2010; Jubany, 2011; Fassin & Kobelinsky, 2012; Johannesson, 2018; Gill & Good, 2019; Affolter, 2021). A shared conclusion from this research is that credibility assessments mobilize a culture of suspicion and disbelief among decision-makers, which influences their judgements of the credibility of asylum narratives. Research that draws on psychological literature explains this as “vicarious traumatization”—i.e., it is very difficult to listen to a narrative about traumatic events without having some kind of psychological reaction, including developing trauma symptoms or compassion fatigue (Rousseau et al., 2002). Other studies have questioned the assumption that plausibility and demeanors would be culturally neutral and therefore possible to assess without considering the cultural biases of the decision-makers (Bohmer & Shuman, 2008; Wikström & Johansson, 2013; Kynsilehto & Puumala, 2015; Määttä, Puumala & Ylikomi, 2021).

Some scholars have explained the suspiciousness among decision-makers as the result of pressure from political actors with restrictive immigration agenda who push decision-makers to become gatekeepers even though their mandate is to be objective and independent. A way out of this dilemma for decision-makers has been to value “asylum while devaluing those who claim it” (Fassin & Kobelinsky, 2012, p. 274), which assumes that the fewer people who are granted asylum, the more protected the Refugee Convention. Other researchers have concluded that decision-makers solve this dilemma by referring to procedural matters as a way to signify justice in the absence of certainty (Johannesson, 2017; Affolter, Miaz & Poertner, 2019; Liolden, 2019).

Studies in cognitive psychology have criticized the assumptions about autobiographical memory that underpin credibility assessments. This research has found

that memory is vulnerable to distortion and biases of many kinds and therefore should not be assessed according to the assumption that human memory can recall events in exact and accurate ways. In particular, emotional distress and mental disorders such as PTSD and depression negatively impact memory and impair the cognitive functions associated with memory (Herlihy, Scragg & Turner, 2002). Moreover, research demonstrates that memory serves functions other than remembering events accurately; it is an important tool to guide future behavior and to maintain a sense of self and personality. Therefore, it is detrimental for asylum seekers to be assessed based on frequencies of details, accuracy, and consistency of memory between different interview situations (Herlihy, Jobson & Turner, 2012). In addition, behavioral cues such as gaze, gestures, and facial expressions have been found to be poor estimators of deceptive narratives (Granhag, Strömwall & Hartwig, 2005; Rogers, Fox & Herlihy, 2015).

Sociolinguists have found credibility assessments in asylum determinations to rest on problematic language ideologies, including a belief that oral communication is detached from social categorizations and institutional discourses (Barsky, 1994; Smith-Khan, 2022). Moreover, sociolinguists exploring the interaction between decision-makers, asylum seekers, interpreters, and lawyers during asylum interviews have revealed that asylum narratives are co-constructed by all participants and influenced by the asymmetrical power relations between the professional workers and the applicants (Blommaert, 2001; Maryns, 2006; Määttä, Puumala & Ylikomi, 2021; Jacobs & Maryns, 2021; Wadensjö, Rehnberg & Nikolaidou, 2022; Nikolaidou, Rehnberg & Wadensjö, 2022).

Although the multifaceted and broad research described above has contributed to opening the black box of credibility assessments in asylum determinations and demonstrated the contradictions and uncertainties inherent in these assessments, these studies have not explored how and why these assessments continue to be perceived as legitimate. In the following, I turn to theories of how legitimacy can be tacitly communicated to understand why credibility assessments are perceived as legitimate despite resting on disputed knowledge claims.

Conceptual Framework and Methodology

Legitimacy can be approached in many ways. For political philosophers, legitimacy is a normative concept—e.g., a law or institution is justified by referring to a universal principle such as justice. For law scholars, legitimacy means that a regulation or law is in accordance with higher legal principles or the internal consistency of a legal system. However, sociological conceptualizations of legitimacy, which are relevant for this paper, pertain to what “is *acknowledged as rightful* by those involved in a given power relation” (Beetham, 1991, p. x, emphasis in original). That is, public consent is an important sign of legitimacy as it pertains to actions that demonstrate compliance with the power relations on behalf of the subordinate. This sociological conceptualization opens up for interpretive approaches to legitimacy—i.e.,

approaches highlighting the communicative, expressive, and symbolic dimension of human interaction (Wagenaar, 2011).

One of many possible ways to analyze the role of communication in legitimation processes is to use Dvora Yanow's (1993, 1995, 1996, 2000) interpretive framework for studying policy implementation. In this framework, policy processes are understood as processes of communicating meaning through actions, speech, and objects. Therefore, the legitimacy of a policy is determined by how different interpretive communities perceive and create meaning around the policy rather than by how well a policy's formal goals are achieved. Interpretive communities are groups of people who, by having similar experiences, identities, and positions, develop shared cognitive schemes, engage in similar acts, and use a similar language to talk about their thoughts and actions. These interpretive communities are fluid and might overlap, but they are distinct to the degree that an analyst can identify them through interaction in the field of inquiry (Yanow, 2000).

Yanow uses the concept of *tacit communication* to explain why some policies, despite failing to live up to their explicitly formulated goals, still can be popular and supported by target groups as well as decision-makers. The reason for this is that policies sometimes have "verboden goals"—i.e., silent meanings that everyone targeted by the policy understands but are not legitimate to make explicit in a public policy formulation (Yanow, 1993). Yanow's interpretive approach relies on a hermeneutic understanding of human meaning constructions as projected onto texts, activities, and artifacts; therefore, meaning can be grasped by analyzing these artifacts in their natural context. In line with this assumption, a researcher has to "identify the artifacts—the language, objects, and acts—in which they are embedded, and which represent them in a symbolic fashion" (Yanow, 2000, p. 20).

Yanow's analytical focus on texts, activities, and objects is suitable for the analysis of legitimation processes where courts play a central role, since judicial language, judicial rituals, and judicial objects have proven to be effective in communicating legitimizing messages to near and distant audiences. It has even been argued that "to know the courts is to love them" because "knowledge also comes from exposure to courts, and exposure to courts means exposure to the highly legitimizing symbols of law" (Gibson & Caldeira, 2009, p. 122).

Analytical Strategy and Material

As stated above, a core assumption underlying interpretive analysis is that meaning constructions are intersubjective; that is, they are bound by the interpretive context in which they exist (Wagenaar, 2011). Therefore, the analytical strategy for this study has been first to identify the relevant interpretive communities, who are the receivers of the legitimizing messages from the courts, and then to analyze the meanings constructed intersubjectively in the meeting between the senders of the messages and the receiving interpretive communities. More concretely, three questions have informed the analysis of the data: (1) *what* is the tacit message signaling, (2) to *whom* is the tacit message addressed, and (3) *how* (through language, activities, or objects) is the tacit message conveyed?

The data supporting the empirical analysis in this study were collected through fieldwork at the Migration Courts in Sweden between 2012 and 2014 and between 2019 and 2022.² For confidentiality reasons, I will not reveal which courts I have conducted research in nor the name, background, or gender of interviewees or claimants. When referring to quotations from interviews, I provide a pseudonym. To gain access to the courts, I needed permission from the head of each court, and special arrangements were made to secure that no confidential information about individual claimants were revealed to me.

During this fieldwork, I conducted 47 semi-structured interviews with judicial professionals. The interviews usually took 1 h, were audio-recorded, and then transcribed. The interviewees were selected based on their experience with asylum appeal procedures. I conducted 27 interviews with judges, nine interviews with litigators from the Swedish Migration Agency, nine interviews with lawyers assigned as public counsels to asylum claimants, and two interviews with lay judges. This selection strategy gave me access to the perspectives of the judges responsible for upholding the legitimacy of the courts, but also how the legitimizing messages are perceived by various participants. Interview accounts were coded inductively to find the most dominant lines of reasoning about legitimacy and credibility assessments. Quotes from interviews I present in this paper should thus be understood as illustrations of a commonly expressed opinion or meaning construction among several interviewees.

The interviews were complemented with observations of oral hearings in asylum appeals. Asylum hearings are often conducted behind closed doors. As it is the presiding judge who decides who can be present during closed hearings, my attendance during these hearings depended on the willingness of a judge to let me sit at the gallery bench and take hand-written notes on what is said and done during the hearing. In total, I was allowed to observe seven asylum hearings. Despite the limited number of observations, these seven observations gave me good knowledge of the ritual aspects of asylum hearings, as all asylum hearings follow the same formal structure. In addition to interviews and court observations, I conducted a limited amount of “backstage” observations in the office corridors, registration offices, lunchrooms, and judges’ offices as well as participated in educational seminars for administrative judges, law students, and lay judges. Through these backstage observations, I could grasp how the different professions inside the courthouse worked with the legal casefiles and I had the opportunity to ask what the casefiles meant to them.

From the ethnographic fieldwork, I became familiar with the particularities of judicial language and what the judges want to signal by using it. However, to make a systematic analysis of written language, I added a sample of publicly available court judgements from the largest Migration Court (Administrative Court in Stockholm) for a randomly selected week (May 3 to May 7, 2021).³ After an initial screening

² I started to study the courts in 2012 as part of my dissertation project and continued the research in a 4-year postdoc project.

³ The judgements regarding asylum were easily identified by a unique identification code (60-01) in the internal registration system at the Swedish administrative courts. The registration office assisted me in pulling out the relevant judgements.

of the full sample (72 judgements), I selected all cases that included an oral hearing (16 cases) as oral hearings are prescribed as a procedural tool for assessing credibility of asylum narratives.⁴ The selection strategy aimed at collecting a sample which was representative of asylum judgements in Sweden, yet, small enough to enable qualitative analysis. I received 132 pages of written text where credibility of asylum narratives was a decisive factor for the outcome of the case. Each court judgement is structured similarly: the first page states the claimants' names, which decision that is appealed, what the appeal is about, as well as the court's decision. This page is followed by several pages of running text including a description of the claims, a summary of the oral hearing, and the reasons for the court's decision. The first instance decision from the Swedish Migration Agency is attached as an appendix to each court judgement.

Altogether, my observations of ritual activities during oral hearings and the file work inside the courthouses combined with the interview data and the sample of written court judgements made it possible for me to grasp the tacitly communicated legitimizing messages inscribed in language, rituals, and objects of the asylum appeal procedure. In the remainder of this paper, I present the results from this analysis.

Communicating Certainty and Morality to Distant Audiences Through Legal Language

One of the most powerful sources judges have to convey tacit messages to different audiences is the impersonal, abstract, and objective reasoning style of judicial language taught in law schools and performed in courts. This language style strives to diminish moral and ethical judgements, social contexts, and uncertainties (Mertz, 2007). This can be explained by the fact that legal decisions do not allow for grey areas or lingering doubts: “[A] convict is not a little bit guilty, a couple are not partially divorced, a forced migrant is not half a refugee” (Kelly, 2015, p. 188). Moreover, judges' words are strongly performative as things happen just by a judge uttering a few words in courtrooms or in written judgements. In the case of asylum appeals, this performativity is evident in that it is not until a judge has declared someone a refugee that one becomes recognized as refugee and therefore becomes entitled to the rights and benefits stemming from that legal status (Johannesson, 2012). Judicial language is also effective in communicating tacit messages as it uses “common words and phrases which have specialized legal meaning” (Conley, O’Barr & Riner, 2019, p. 194). That is, judicial language can create meaning on

⁴ The percentage of cases decided after an oral hearing vary over the years and between courts, ranging from 10 to 45 percent of all appealed cases (Riksrevision, 2022). The sample is representative in this regard as 22 percent of the cases had oral hearings. All 16 cases pertained to countries in the Middle East and sub-Saharan Africa, and the claimants sought protection under the legal grounds of gender-related harm, political persecution, sexual orientation, and religion (conversion to Christianity). All 16 cases were dismissed by the migration courts.

two interpretive levels simultaneously: one ordinary meaning, which makes sense to laypeople, and one legal meaning, which makes sense to legal professionals.

The interviewed judges described how they used written language in court judgements to communicate legitimacy to various audiences, most notably to a lay audience consisting of the claimant(s), the anonymous general public, and journalists. However, they also knew that the judgement would be read by judicial experts, such as lawyers, other judges, and decision-makers at the Swedish Migration Agency. Therefore, the judges put much effort in finding a balance between a specialized judicial discourse and a lay discourse. In the interviews, the judges expressed strong opinions about how a judgement should be written:

Some [judges] say you should keep it [the written judgement] very short, as short as possible is the best. I do not belong to that school. Many [judges] also ask “who are we writing the decision for?” and some then respond that we write it for the parties [. . .] Someone claims that we write it for the superior court [. . .] I claim that we write it for third parties [. . .] The media, the public, they should be able to understand from the decision what it is about, what is being assessed and why it turned out the way it did. (Judge Ines)

This opinion about the general public and media being the prime audience of the court judgements is further strengthened by the use of impersonal references to the claimants in the judgements. The claimants were consistently referred to by their full name or as just “the claimant.” Using an impersonal appellation (i.e., “the claimant”) signals that the judges were addressing a third party and a broader audience.

The court judgements included consistent references to the decision-makers as “the Migration Court” or “the Court” in the running text of the judgements. This use of the singular, however, contrasted with the signatures at the bottom of the court judgements, which consisted of the full names and titles of one professional judge, three lay judges, and a law clerk, indicating that the decision was actually made collectively among several individuals with different expertise and competences. The double representation of the decision-makers as a uniform organizational agent (“the Court”) and as a collective of individuals (who signed the decision with their names) constructed the decision-maker as an impersonal agent at the same time the names at the end of the judgements signaled personal accountability and transparency. An extract from one of the judgements illustrates how references to “the Court” as an impersonal agent were used to make subjective opinions about a claimant’s sexual orientation appear objective:

The Migration Court considers that the claimant, in view of the fact that he had known about his sexual orientation for a long time, should have undergone an internal process that includes reflections, thoughts and feelings about this part of his sexuality. He should therefore be able to tell about his sexual orientation in a detailed way and in such a way that the story appears as self-experienced (Judgement 5, my translation from Swedish).

Despite that the assessment expressed in this paragraph relies on disputed, yet common, assumptions among asylum decision-makers about how genuine LGBTQ asylum narratives should be expressed (Berg & Millbank, 2009), this subjectivity was obscured by reference to an authoritative and impersonal agency (“The Migration Court”). A court is an organization or a building, and as such, it cannot have subjective opinions or human biases.

However, the ethnographic data demonstrates that this display of objectivity and certainty in written judgements does not correspond to the actual process of asylum decision-making. In interviews, judges often considered assessments of credibility in asylum cases to be very complex and uncertain. For example, one judge said that “I cannot know for sure, I have never been to Iraq and Iran and Afghanistan” (Judge Jonas), and another judge noted that assessments about a person’s sexual orientation had nothing to do with jurisprudence, because these assessments required the judge to “step into the head of a person and, like, have a look inside there” (Judge Hans). Similarly, a third judge concluded that “to sit in a hearing and assess whether someone is homosexual or has converted, that is totally impossible to know” (Judge Oskar). Nevertheless, the interviewed judges were required to decide these cases, because, as Latour concludes, “the case has to be concluded. And this is not just a possibility but an obligation, which is inscribed in the law: a judge has to decide, otherwise he would abuse his authority” (Latour, 2010, p. 221).

Moreover, the term “credibility” (*trovärdighet*) in Swedish harbors a double meaning, which might convey a tacit message of moral justifications to lay audiences. According to the legal definition prescribed in a precedent from the Migration Court of Appeal from 2007, cited in 11⁵ of the 16 judgements, an asylum narrative should be considered credible if it is concrete, detailed, and coherent and not characterized by conflicting information. Moreover, the story in its main features should remain unchanged during the asylum process in different instances, and it should not contradict available country information. Thus, the legal meaning of credibility is constructed around the story (not around the person), and it is determined by the level of details, coherence, and consistency in the narrative (not by the claimants’ demeanors).

However, the lay meaning of credibility in ordinary Swedish is broader than the legal definition and implies a moral judgement about a person’s demeanors. *Trovärdighet* is composed of two words in Swedish: *tro* (belief/believe or faith) and *värdig* (worthy of). According to the Contemporary Dictionary produced by the Swedish Academy (Svensk Ordbok, 2021), *trovärdig* is an adjective that means to consider someone or something “deserving trust” (*förtjänar tilltro*). According to the same dictionary, the word can describe either an object or a person. Therefore, the ordinary meaning of *trovärdig* harbors a tacit moral judgement about another person—i.e., people have to make themselves worthy of being believed to be considered credible. Consequently, in lay vocabulary, it is degrading to describe someone as lacking

⁵ Judgements 1, 2, 3, 4, 5, 7, 8, 10, 11, 13, and 15.

in credibility as it signals that the person has done something to cause this lack of trust.

This morally encumbered lay meaning of credibility as a judgement about a person was further mobilized in court judgements when this concept was used as a description of the asylum seeker *as a person* rather than a description of their narratives. In four⁶ of the 16 judgements, the dismissals of the asylum appeal were motivated with reference to the claimant's "general credibility" (*allmänna trovärdighet*), which was deemed to be affected negatively by information provided by the claimants. From a lay person's point of view, to claim that someone's general credibility has been affected negatively can tacitly be understood as a moral judgement as it implies that the person has done something morally dubious. Based on this analysis, I suggest that the reason the tacit message about undeservingness is effective in upholding legitimacy of the courts' judgements is that it creates a moral acceptance for the courts' dismissals of asylum claims.

Communicating Authority and Unity to Participants of the Trials Through Court Rituals

The judiciary can communicate tacitly with different audiences through rituals and ceremonies. A ritual is a frequently performed action conducted in a predetermined order. A ritual's legitimacy does not depend on what is said or done but on the performative dimension of the sayings and doings, which are the actions that deserve analytical attention (Collins, 2004). The ritualized activities of court hearings help judges uphold authority in the courtroom and bring a sense of solemnity to the situation (Rowden, 2018). However, if the ceremonial aspects of the courtroom activities appear to be the hearing's most important functions, the legitimacy of courts as institutions of justice would be lost (Komter, 1998). Therefore, judicial decision-making needs to appear to be spontaneous, without predetermined outcomes, and judges need to show that they have weighed different rules, arguments, and facts against each other before reaching a final decision (Bergman Blix, 2022; Bouillier, 2015).

Even if court hearings are powerful rituals and as such can communicate tacit messages, they cannot reach distant audiences outside the courthouses to the same extent as court judgements. Although oral hearings in courts are designed to be public events, it is very rare that people other than the parties who play active roles in the proceedings are present. Therefore, court hearings predominantly communicate legitimating messages to the participants in the oral hearings—i.e., the claimants, law clerks, lay judges, professional judges, lawyers, and sometimes witnesses.

The interviewed judges were conscious about the communicative power of the oral hearings, and they were aware of the roles they played in perpetuating legitimacy for the courts by their appearances and actions during oral hearings. For example, one judge claimed that she needed "to maintain some sort of authority and

⁶ Judgements 10, 13, 14, and 15.

demonstrate [authority], otherwise the court loses legitimacy” (Judge Sara). Other judges expressed surprise over the authority they had during oral hearings: “it is unexpected, I have to say, the position of power you get into, because you really notice that people listen when you say something” (Judge Fredrik).

From a ritual perspective, it is less surprising that court hearings accentuate judges’ authority, as several ritual aspects of the oral hearings emphasize the judges’ authority. For example, the judge always sits at the center of the room together with the law clerk and the three lay judges but is separate from the adversarial parties. This arrangement accentuates the judge’s authority over the disputing parties. Moreover, as in all rituals, the order in which the participants arrive signals hierarchy and status. The professional judge usually enters the courtroom last, that is, the lay judges and law clerks must wait for the judge to arrive. Another way in which the judge’s authority is confirmed through ritual activities is that the judge is the only participant who speaks without requiring permission. Only when the judge gives permission can the law clerk announce that the court is ready to open the hearing and welcome the adversary parties in the room. Lay judges are explicitly prohibited to speak during oral hearings and law clerks only speak to respond to the judge’s questions. Likewise, litigators, asylum claimants, and public counsels always wait for the judge to give them permission to speak.

In addition to distributing authority, rituals also create ingroup loyalty and affinity. Ritual analysis has shown that participants experience rituals differently depending on their positionality and familiarity with the ritual elements. Regular participants who take an active role in a ritual experience a higher degree of emotional satisfaction, affinity, and engagement in the ritual than those who only have marginal roles (Collins, 2004). In asylum hearings, the claimants are the only participants who have not participated in a court hearing before, so they are the only participants who are unfamiliar with the different phases, activities, and rhythms of the ritual.

This distinction between the frequent participants and the asylum claimant is also enacted throughout the hearing, for example, when the professional judges turn to the asylum claimants at the beginning of the hearing to explain the ritual elements. This explanation is often given in plain language and with the ambition to make the asylum claimant feel comfortable. From a ritual perspective, however, this attempt to set the asylum claimants at ease could reinforce the separation of the “insiders” of the rituals from the “outsiders” as only the outsiders require an explanation of the ritual activities. My proposition is that this display of judges’ authority and the creation of group loyalty among the frequent participants of the hearings communicate to the participants of the hearing that the judges are more competent to assess credibility of asylum claims than the other participants.

Communicating Delineations and Hierarchies to Court Staff Through Casefiles

Judicial work not only consists of writing judgements and performing ritualized activities during oral hearing, but also is closely bound to concrete material objects. At the center of this materiality is the legal casefile (Scheffer, 2004).

Studies examining casefiles in judicial decision-making are not foremost interested in files as texts but as material objects. One of the most famous analyses of the role legal casefiles as material objects play in bringing legitimacy to courts is found in Bruno Latour's (2010) ethnographic inquiry into the inner workings of the French Administrative Supreme Court. Latour concludes that casefiles are the organizing objects of the court. They contain material traces of the transformation process of a non-legal and often emotionally-laden complaint from a citizen to the state into a legally-binding precedent signed by the judges of the Supreme Court. A similar analysis is found in Irene van Oorschot's study of judicial reasoning and judgement when she claims that the materiality of the legal casefile works "as an innocent transporter of facts and truths" that "becomes visible as an object that has actively transformed and delineated 'the case'" (2021, p. 14). Borrelli and Lindberg (2019), analyzing the performative dimensions of paperwork within migration control bureaucracies, found that this work not only establishes certain kinds of "truths" and confers legitimacy on the decision-makers but also helps relieve case officers of personal responsibility for ethically challenging decisions.

In Swedish administrative courts, the procedure is predominated by written exchanges between the parties. Different categories of professionals are doing all sorts of "file work", for example, reading, transporting, storing, complementing, and annotating files. The legal casefiles—as material objects—thereby carry tacit messages to all professionals working inside the courthouse. For example, during my fieldwork, I learned that compulsory care of minors and people with drug addiction are called "yellow cases" and compulsory psychiatric care cases are called "green cases" because the color of their file folders are yellow and green, respectively. Another way in which the materiality of the file carries symbolic meaning was evident in judges' talk about "heavy cases." The expression refers both to cases that are legally complex and to the actual weight of the file:

You want to have the simple cases too. You would get tired quite fast if you only had heavy cases all the time. You receive a file which is half a meter tall, it is not fun if all cases are like that. (Judge Emilia)

In the same way that the materiality of casefiles gave names and weight to different types of cases, the casefiles tacitly communicated to the legal professionals inside the court that the knowledge on which they based their assessments of credibility could be delineated to what was possible to store in the legal casefile. In other words, the material shape of the casefile—a bound pile of papers—became a material manifestation of a clearly delineated body of information judges need to find the legally relevant facts. Information that could not fit on a piece of paper was of no legal relevance for the judges. This materialization of legal relevance in the shape of the casefile was articulated by Judge Hans when he described how he engaged the files once they were handed to him. He read the casefiles chronologically, that is, backwards; beginning at the back and working his way to the first page and only paying attention to what was legally relevant: "That [legally relevant information] is all I need to know" (Judge Hans).

Besides delineating what was considered relevant knowledge for asylum determinations, casefiles also helped maintain and manifest a hierarchy of knowledge among the court staff. The process by which the casefile moves through the courthouse reflects the hierarchies among the staff in terms of whose knowledge claims are most valuable. The casefile's journey in the administrative court begins with an appeal arriving at the registration office where it is logged with a unique case number and assigned to an individual judge within the courthouse. After registration, the casefile moves to the court secretary's office, where it is screened for formal eligibility, and then given to a law clerk for a first legal overview. Under the supervision of the designated judge, the law clerk feeds the file with documents while making sure to communicate all new information about the case to the parties. When the law clerk is ready with the file, the case is ready for adjudication. Now, the file has "ripened" enough—to borrow a metaphor from Latour (2010, p. 82)—to be handled by a rapporteur, who works as an assistant to a judge and prepares a written proposal for judgement. Only after that is the casefile ready to be handed to the judge, who makes the formal decision. This journey signals that the judges are positioned at the top of the symbolic ladder of legal knowledge inside the courthouses, and hierarchy is manifested every time they are served a heavy and fully "ripened" file, ready for "harvest"—i.e., ready for adjudication. Based on this analysis, my suggestion is that casefiles delineate what counts as relevant information and manifest knowledge hierarchies among the professionals inside the courthouse.

Discussion

In this study, I have outlined an interpretive perspective of legitimacy and connected this perspective's focus on the symbolic dimension of language, actions, and objects to the judicial field. This enabled an analysis of the performative force of judicial language in court judgements, the ritual function of court hearings, and the roles legal casefiles as material objects play in transporting legitimizing messages to court staff. In the following, I summarize what the tacit messages from these diverse settings were and which implications these messages might have for asylum seekers, policy-makers, and the general public in refugee-receiving countries such as Sweden. I then conclude by discussing the contributions this study makes to the literature on asylum determination procedures.

I proposed that the judicial language used in court judgements signaled both certainty about the credibility assessment and a moral judgement about the asylum claimants' deservingness to distant audiences. This, in turn, created a moral acceptance among the public for the court's dismissal of asylum claims due to lack of credibility. The ritual activities during oral hearings facilitated group loyalty among the frequent participants of the hearings and fostered a perception among them that the professional judges' assessments of credibility were professional and accurate. Further, I suggested that as the legal casefiles travelled the administrative journey through the courthouse they reinforced the internal hierarchy among the court staff and confirmed that judges are most competent to assess credibility of asylum claims. The material shape of the legal casefiles also assured the judges that they had been

provided with all knowledge needed to assess the credibility of an asylum claim. Together, these tacit messages signal that credibility assessments in courts are accurate (rather than arbitrary), objective (rather than subjective), professional (rather than lay), and morally just (rather than unjust).

Furthermore, the interpretive framework employed here assumes that if this legitimating message would have been articulated explicitly, it would likely have spurred controversies over the assumptions about human behavior, communication, and autobiographical memory underpinning the credibility assessments. However, by conveying these messages tacitly through symbols, open contestations and debate about these assumptions have been largely avoided. One consequence of these legitimizing messages is that credibility assessments in asylum determinations are perceived to be a straightforward and uncontroversial method of distinguishing between those foreigners who are considered worthy of the host state's protection (and therefore labelled refugees), from those who are considered unworthy (and therefore labelled economic migrants or bogus refugees).

In light of this finding, I want to raise a normative question about the implications for the legitimacy of courts in general and, by extension, for the democratic system. On the one hand, the tacit message about credibility assessments as objective, professional, accurate, and morally just can be seen as an important source of upholding legitimacy for the courts as institutions of justice. Sociolegal scholars have argued that court rituals are important for claimants' acceptability of court decisions as they signal respect for the individual claimant and for the court's independence (Gibson & Caldeira, 2009). Rowden (2018) discusses how remote court hearings deteriorate the quality of the proceedings as the ceremonial aspects are lost, and Hambly and Gill (2020) make a similar remark regarding the negative consequences of rushed hearings in court. Johannesson (2022), in turn, demonstrates that the quality of the communication between claimants and judges is partly determined by what kinds of ceremonies are performed during court hearings. In addition, political scientists have demonstrated that when people start to mistrust the quality and fairness of state institutions, a self-fulfilling spiral of mistrust begins that risks eroding the quality of government and the effectiveness of the welfare state and the democratic system (Rothstein & Stolle, 2008). Thereby, the legitimizing messages discussed in this paper can be understood as desirable if one wants to have stable state institutions and effective government. On the other hand, legitimacy of state institutions can be seen as problematic if it only builds on tacit messages instead of resting on knowledge which can withstand being scrutinized in open debate. In the case of credibility assessments of asylum claims, open debates about the assumptions underpinning these assessments seldom reach beyond academic forums and the results from these discussions have so far had little impact on the criteria and practice of assessing credibility of asylum claims.

By employing this interpretive framework, I have contributed to the literature on credibility assessments in asylum determinations in several ways. The foremost contribution lies in the formulation of this conundrum around legitimacy of credibility assessments rather than in the explanation it offers. Studies on credibility assessments in asylum determinations have done excellent work in pointing out the controversial assumptions underlying these practices, as well as effectively elaborating

on the consequences of these practices. However, this study analyzed *how* and *why* these assumptions have persisted despite the disputed knowledge they rest on, thereby opening the space for further inquiries about the varied roles legal practices play in categorizing migrants into protectable or deportable.

In addition, the interpretive perspective used in this study makes a theoretical contribution to the literature on credibility assessments in asylum determinations by taking symbolic communication seriously. It is well known that courts are masters of ceremonies and have a strong legitimating impact on society (Gibson & Caldeira, 2009). However, this symbolic dimension of courts has not been fully explored in research on asylum determinations. The interpretive approach presented in this study brings in a new perspective to the literature as it enables analysis of legitimacy as a process of communication between sender and audience and not as an evaluative judgement of the researcher about the credibility assessments in a particular context. In this respect, the concept of interpretive communities has proved to be valuable. This concept captures the communicative aspect of legitimation processes by forcing the analyst to identify and distinguish between different audiences, which are exposed to the tacit messages of legitimation. Hopefully, future studies will engage in critical examinations of how and to whom legitimizing messages about credibility assessments of asylum claims are communicated.

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Declarations

Ethics Approval The study is approved by the Swedish Ethical Review Authority.

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