JUDITH BEYER

Asylum Interviews in the UK

The Problem of Evidence and the Possibility of Applied Anthropology

Abstract: Evidence and credibility assessments are an important part of asylum procedure in the UK. But answers given in the asylum interviews cannot be measured against an independent standard. This is particularly the case if the applicant claims to be stateless. Drawing on ethnomethodology, I analyse asylum interviews and show in what ways evidence can rather be understood as the result of an asymmetrical co-construction. Consequently, the individual applicant disappears and a 'case' is established. Anthropologists who write country of origin reports based on such 'case material' for tribunals and courts can highlight the asymmetries in evidence-making and question the very categorisations through which the state operates. The article contributes to ongoing debates on the role of anthropologists and their knowledge as experts in court.

Keywords: applied anthropology, asylum, evidence, statelessness, UK

Since leaving the EU in 2020, the British government has been trying to deport migrants from its territory even before they can apply for asylum. By declaring their entry 'illegal' if they did not enter through a narrow scheme, the government thus criminalises refugees and migration as such (Beyer 2023). The previous Tory-led government (until July 2024) had issued the notorious Illegal Migration Bill in 2022, which was repealed by the Labour Party once it assumed governmental office. But even under the new government, the illegalisation of migration has continued unabatedly. On X, the Labour Party proudly announced that 'raids and arrests of those working here illegally have increased by 38 percent. We said we'd crack down on illegal working. We are.'[1] In addition to a draft bill on securing the border, a new version of the so-called 'Good Character Requirement' was released in February 2025 that aims at preventing all 'illegal' migrants and their UK-born children from ever receiving British citizenship, thus possibly rendering thousands of children born in Britain stateless. Even under these harsh conditions, migrants do continue to seek and apply for asylum.

In this article, I interrogate the process how evidence is established in asylum procedure by engaging with anthropological and socio-legal literature on evidence and credibility assessments. The literature is critical throughout, highlighting the inherent uncertainty of knowledge in asylum procedure. Many authors in this field have focused on the courts and particularly on how judges establish and weigh evidence.[2] My aim is to expand this body of literature by showing how already in the initial asylum interviews the groundwork for evidence is being laid, rather than only at a later stage.

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I add to recent publications on how asylum seekers self-generate 'evidence' via their social media to support their asylum claim (Andreassen 2020; Laws 2024). I draw on ethnomethodology, particularly literature that focuses on the trans-sequential analysis of empirical data (Kolanoski 2018; Scheffer et al 2010), to analyse how evidence is produced asymmetrically in asylum interviews but is nevertheless co-constructed between state interviewer and asylum applicant.

My article also contributes to anthropological literature that interrogates the role of anthropologists working as experts in various asylum systems. The literature can roughly be divided into two fields: one group of authors is critical of legal environments in which anthropologists' engagements are confined to the so-called 'cultural defence', a type of argument that operates with essentialising notions of 'culture', 'race' or 'identity'. Authors such as Melissa Demian (2008) thus emphasise the difficulties anthropologists face as experts in this domain of practice. The other set of authors sees anthropological engagement in asylum procedure in a more positive light and highlights possibilities for anthropologists to put their knowledge to use (e.g. Höhne 2016; Vetters and Foblets 2016). I position myself somewhat translaterally: while I consider anthropological involvement important, I argue that 'the law' itself prevents judges from openly acknowledging anthropological knowledge. Anthropological knowledge *can* inform a judge's decision, but it will likely disappear behind established legal categories in the judge's final written decisions.

My article is structured in four parts. First, I summarise the asylum procedure in Britain, highlighting the country's exit from the EU and the specific question of statelessness as two particularities that complicate the matter further. In the second part, I introduce the role of expert anthropologists and focus particularly on the question of ethics when working with 'case material'. In the third part, I draw on empirical material from an asylum case in which I was involved as a country of origin expert. I demonstrate how 'evidence' is constructed and that the human subject disappears behind legal categories that are then subjected to scrutiny by agents of the state. In the fourth part, I discuss potentials and pitfalls of an applied legal anthropology in the context of asylum procedure.

The Problem of Establishing Evidence

In each asylum application it must first be clarified whether the person can be recognised as a refugee in line with the definition provided in the Geneva Refugee Convention, according to which a person is a refugee if they have a 'well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion' (UN Convention Relating to the Status of Refugees 1954 Art. 1, para. 2). British asylum procedure also examines whether an asylum seeker requires humanitarian protection, whether expulsion from the UK would contravene Article 8 of the European Convention on Human Rights 1950, and whether a temporary or permanent residence permit should be granted. In the British system, it is generally assumed 'that the risk in the country of origin cannot be definitively measured' (Reiling and Mitsch 2017: 546) and that the so-called 'real risk' or 'reasonable

possibility standard' must therefore be approached by drawing on as many different sources of information as possible (see also Mitsch and Reiling 2018).

To establish evidence, asylum applicants are asked to prove their nationality or country of origin, usually in the form of a passport, an identity card, a birth certificate or other documents deemed relevant, such as food ration cards from a United Nations refugee camp. If no identity document is presented, as is mostly the case with applicants who claim to be stateless, processing the case becomes more complicated. A stateless person is defined in international law as 'a person who is not considered as a national by any State under the operation of its law' (UN Convention 1954 Art. 1.1) and as such cannot or can no longer demand official identity documents from such an entity.[3] While the UK established a separate statelessness determination procedure in 2013 that should guide a stateless person through the steps to officially claim their statelessness, this procedure is often not well known among stateless persons or their lawyers. Even when applied, the percentage of successful cases is in the single digits, with no right to appeal in case of a negative decision (Bezzano and Carter 2018; UNHCR 2020). The Asylum Information Database (AIDA), a database managed by the European Council on Refugees and Exiles (ECRE), does not even mention the statelessness determination procedure as a possible legitimate path towards staying in the UK. Thus, statelessness continues to be mostly addressed within the framework of regular asylum procedure. In these contexts, however, caseworkers or state officials begin questioning a stateless person on the basis of what Thomas McGee has called 'citizen norms' (2023: 3) that are applied in all country of origin assessments – norms that might not fit the particular circumstances of a stateless individual.

As per standard procedure, the state representative tries to assess the nationality and/or the ethnicity, religion, political opinion or membership in a particular social group of the asylum seeker based on the applicant's own account. Thus, the narration of the asylum seeker's personal biography and history becomes pivotal. This takes place in the form of interviews carried out by caseworkers from the National Asylum Allocation Unit (NAAU) of the Home Office. First, a standardised 'screening interview' is conducted, during which the applicant's personal details, biometric data, the reasons for the asylum claim and information on how the person entered the UK are collected. The case is then transferred to one of the Asylum Casework Units, which are located in different regions of the UK. There, an extended interview is conducted, which is obligatory regardless of an applicant's individual motive for applying for asylum. During this interview, which can last several hours, the applicant interacts with a state representative, who compiles information about the asylum seeker's individual life in the form of a legally viable 'case'. In most instances, the representative (officially called the 'decision-maker') interviews the applicant with the help of an interpreter. The interviewee is not given any specific information about the type or length of answers expected from them; they are only asked whether they consider themselves to be in sufficiently good health to participate in the interview. One of the aims of an extended interview is to establish at an early stage whether the personal, social, political and cultural backgrounds provided by the asylum seeker justify the asylum application and whether the applicant's personal story is consistent with the general knowledge about that person's stated country of origin. Based on the answers

given, the Home Office then issues a first instance decision, against which the applicant can appeal if it results in a rejection of their asylum claim. Once denied asylum, the applicant is advised to seek legal representation. Most of the rejected applications are appealed to a so-called First-tier Tribunal. If the appeal is refused there, it can be appealed to an Upper Tribunal. Hearings and appeals are time-consuming, and there has been a considerable backlog of undecided asylum cases for several years. Caseworkers are often under pressure not only to increase the number of cases processed, but also to reject applications (Bolt 2017; Brewer 2018; Syal 2024). In 2024, half of the initial asylum claims were at first denied.[4] They can subsequently be appealed and it is at the appeal stage that lawyers request external experts to report on the 'case'.

Anthropological Expertise and Ethics

In the context of representing their clients who seek to reverse their denied asylum claim in First-tier and Upper Tribunals, British law firms usually contact experts who, in addition to providing information about the country of origin (COI), are supposed to answer in writing specific questions about the authenticity of the identification documents presented by the person, the plausibility of the narrated flight history and other details. Anthropologists, along with regional scholars, are considered well positioned to serve in adversarial (common law) systems that rely on outside expertise, as they not only have knowledge about individual groups or regions but also are usually up to date with the historical context and current political events in the country. The COI reports are presented to judges and taken into account as the courts see fit when passing judgment. Experts have to perform an argumentative balancing act as, on the one hand, they are supposed to remain neutral, but on the other hand they are often required to answer guiding questions that the law firms pose in the interests of successfully appealing the decision by the Home Office (see also Beyer 2022; Höhne 2016; Low and Merry 2010).

It is common for British law firms, which are pressed for time and resources, to contact several COI experts at the same time when searching for someone suitable to write a report on their client's case. As a COI expert, I usually receive the entire case file already in the very first email, that is, before I have even agreed to work on a case. These files contain all official documents created by the Home Office, such as interview transcripts, the asylum decision and the judge's decision if the lawyers are intending to appeal a First-tier Tribunal's decision or want to submit a fresh claim. In addition to state documentation, case files can also contain the applicant's medical records, psychological or psychiatric reports, reference letters from non-governmental organisations or community groups in support of the applicant, and country of origin information the applicant has assembled themselves. Since I started working as a COI expert a decade ago, I have encountered only one law firm that had a policy of data protection in place. In all the other instances, nothing was done to protect their client's identity other than trust in the integrity of the COI expert. Being accustomed to treating my interlocutors' personal data with the utmost care, I was surprised that in a legal context the right to privacy and to the secure handling of data seemed to be

of little concern. I made this a point of ethnographic inquiry as I began to develop an interest in the very materials I received. It soon became evident to me that despite the fact that asylum has to be claimed on an individual basis, what the documentation creates is a 'case' which entails a de-individualisation of the person seeking asylum. The official transcripts also reveal that an asylum interview is a co-constructive practice in which both participants become unequal 'partners' (see Holstein and Gubrium 1997), united only in the fact that they both lack knowledge about the other. The 'evidence' generated in this way remains vague, and even the highly structured and formalised nature of the overall process cannot hide this fact.

In the following, I discuss two excerpts from an extended interview with an asylum applicant who identified as a stateless Muslim Rohingya, without using names for people or places or quoting from my own expert opinion. I do, however, quote from the judge's decision, as these decisions are generally publicly accessible – just as the court session would have been in which the appeal was heard.[5] However, I find it necessary to further expand on the issue of ethics and informed consent in the context of this applied legal anthropological work. The reason I draw on this case material is not to specifically discuss anything from a given applicant's biography, background or personality. Rather, I seek to trace how 'evidence' is being generated over the course of the asylum interviews. In interview transcripts of these asymmetrical encounters, one can witness how the individual disappears behind the 'case' that they inadvertently help constitute, without understanding the weight that will subsequently be given to some of their answers or their lack of knowledge and understanding. While I could, in theory, contact all asylum applicants for whose cases I have written expert reports and ask for their 'informed consent', for ethical reasons I would not do so. Contacting them would put them in a situation that would be as asymmetrical as the one they were made part of in their asylum interviews. If they found out that their asylum decision was successfully appealed also because I submitted a report on their case, there is no way for them to reciprocate for what they would understand as me having 'helped' them. It is not surprising that when colleagues do ask asylum seekers for their consent, the latter do not object to the anthropologist accessing their files (see, for example, Spotti 2019: 76). And if an asylum appeal in which I was involved was not successful, I would expect rejected applicants to categorise me as just another person who was not able to 'help' them. In the context of asylum, I have carefully weighted not trying to obtain informed consent from individual asylum applicants with wanting to shed light on a part of the asylum procedure that is usually not problematised for lack of data access.[6]

The following section demonstrates how asylum interviews generate standardised answers that fit into pre-defined legal categories with the aim to establish an applicant's credibility or to discredit it.

'Did You Not Try to Get More Information About Your Ethnicity?'

In contrast to the so-called screening interview, where questions are standardised and already typed out in a ready form, the back-and-forth in the more comprehensive extended interview generates more material that is specific to the conversation

at hand. Answers are more often submitted in the form of the interviewer's handwritten notes than in form of a typed transcript as in the case of the shorter screening interview. In addition to the interviewee, a translator is often present in both types of interviews. They translate the questions into the person's (presumed) native language or the language currently spoken by the asylum seeker, and translate their answers back into English for the state official to note down. Because the interviewer generally does not understand the language of the interviewee, he/she is dependent on the translator. Only what the translator has understood or considers 'relevant' is recorded. A transcript is thus a record of what an interviewee understood of what a translator translated. It is a kind of comprehension protocol, which explains the extensive use of bullet points as well as the spelling mistakes.

In my first example of a particular extended interview, the applicant answered more than 140 questions. Several of these questions were clearly aimed at establishing his credibility even at this early stage of the asylum procedure. The questions asked were intended to generate material that can substitute for the fact that the applicant did not produce any identification documents. The applicant, who claimed to be of Rohingya ethnicity, explained from the outset that he had entered the country with the ID card of a Bangladeshi citizen, which he had received from a smuggler. He had never had his own identity document. In the course of the interview, which lasted several hours, the interviewer nevertheless asked several times about (missing) identity documents – a total of twenty times if one includes questions about identity cards, passports, medical certificates, school reports and residence permits. A comparison of asylum cases indicates that the interview questions and the caseworkers' questioning techniques tend to follow a pattern of asking the same question several times, even if it had already been answered; the conversation analyst Emanuel Schegloff (1995) speaks of the creation of 'information redundancy'. In the context of asylum procedure, I argue that this represents an attempt to generate 'evidence'. The following sequence is taken from the first part of the extended interview, after the applicant had already clearly stated that he had fled from Burma with his parents when he was two years old.[7]

I: What have your parents told you about Burma?

A: Dangerous for us in Burma to live.

I: Did you try and find out more about the country?

A: No.

I: Why not?

A: When I was two I left Burma because I left two years old I don't have much knowledge about Burma.

I: Did you not want to know more about the country you were born in?

A: Yes I have interest. But my parents told me it was enough for me to hear. It was enough for me. I can see how meet (?) happening. When I was in [European country] I hear to. Muslims are burnt alive.

I: Have you tried to find out more information about the country as an adult?

A: I'm trying to see what is going on in the TV.

I: Have you ever had a passport?

A: I have no passport, nothing.

The interviewer decided to write down the translator's partly broken and abbreviated English verbatim. This suggests authenticity, as if one were 'close' to what was actually said. However, it is the words of the translator that are reproduced, not those of the interviewee. Regarding the content of the questions asked in this sequence, it is noteworthy that the interviewer asks three times if the applicant had made an effort to find out 'more' information about 'the country [he was] born in'. But when the applicant talks about what he has heard (Muslims being burnt alive), the interviewer does not follow up on this point – he or she either lacks knowledge of the cultural setting to be able to contextualise the applicant's statements or lacks interest in engaging with the actual statements provided. Arguably, it is also not their job to do so. They are only supposed to generate data for others to work with. Their duty, in other words, is to help create a case, not to understand. Fittingly, the next question (on possession of a passport) has no connection with the previous sequence of questions and had been answered in the negative already in the screening interview. In the context of cross-examination in American courtrooms, Paul Drew has argued that the production of contrasting accounts 'aims to provide the jurors with the material from which they can work out for themselves what to make of the facts' (1992: 516). In asylum interviews, however, caseworkers do not have a conflicting version of an account to offer or to elicit from an applicant, nor do they have the means to scrutinise the applicant's descriptions. The asylum seeker and the interviewer therefore share what in ethnomethodology is called an 'interactional dilemma' (see Garfinkel 1967, 2002; Solberg 2011), and they solve it by trying to avoid face-threatening acts. For example, the applicant does not answer 'I don't know' or 'I don't understand you', but tries to accommodate the interviewer's repeated demands for more information by saying that he will 'find out'. In this way, both contribute to the creation of accountability in their interaction, regardless of the fact that their positions of power and their interests are unevenly distributed. The alienation process from the actual story of a human life that the inherently uncertain knowledge undergoes in the course of such interviews due to the different participants, their respective knowledge horizons and language barriers, and the formality of their interaction is also clear from the sequence reproduced above. Strictly speaking, documents created in this way are not biographical accounts. The interview transcripts rather showcase 'hint-and-guess sequences' (see Holstein and Gubrium 1997) in which 'suggestions' are made by the caseworkers regarding the asylum seeker's origins, language, culture and flight history that are to be taken up by the applicant. In their 'suggestions', the caseworkers refer, on the one hand, to the information available in the COI databases and, on the other hand, to the expertise they have acquired in the course of their professional activities (see Kolanoski 2018). Such 'suggestion' prompts are either accepted or rejected by the asylum seekers, although the rejection of 'suggestions' is much rarer, as it puts the rejecting person in the position of a 'repair initiator', in which they would have to make a counter-suggestion in order to keep the interaction going (Schegloff et al 1977). In such interactions, the dialogue partners therefore attempt to constantly update their accounts. What needs to be scrutinised is whether they work towards a meaningful social outcome even when their interests are potentially opposed and a common understanding cannot be assumed.

In another sequence further into the interview, the interviewer refines the questions: not merely more information about the country seems to be of interest, but also information about the applicant's 'traditions and customs':

> I: Where do rohingyens [sic] descend?
>
> A: From Arab all I'm telling you is what I heard.
>
> I: Did you not try to get more information about your ethnicity?
>
> A: I was in danger of my life before. But now I am trying to find more about Rohingyas.
>
> I: What have you found so far?
>
> A: All Rohingyas are dying all the news from BBC. Rohingyas burnt alive.
>
> I: Did you not try and find out about their traditions and customs?
>
> A: No.
>
> I: Why not?
>
> A: I'm trying. Since I came here I try and get some knowledge about it.
>
> I: You arrived more than a year ago, and the only information you can tell me is that they are being burnt alive. How come you don't know more after having been here for more than a year?
>
> A: There are innocents dying they are trying to finish us off.
>
> I: That doesn't answer my question. You have been here for more than a year. Why do you not know more about the traditions and culture?

In this sequence, the interviewer equates information about the country with the applicant's ethnicity and that, in the course of questioning him, conflates 'ethnicity' with 'traditions and customs' or 'traditions and culture'. The applicant denies knowing more about these things and can only point to recently acquired knowledge (by way of TV) of the current situation in Myanmar for Rohingya ('dying' and being 'burnt alive'), but the interviewer is after information that could be assumed to reveal the applicant's identity. In response to the query about the 'descent' of the Rohingya, the applicant gives a long answer concerning his presumed lack of knowledge 'about the traditions and culture' of Rohingya, claiming that he really tried to find out more. After his answer, the interviewer did not continue questioning but instead called for a break.

Even from these short question-and-answer sequences, it is clear that we are dealing here with essentialised notions of 'culture' in the broadest sense, whereby an ethnic group can presumably be identified and distinguished by its own language and 'traditional' beliefs or practices that make it distinct from others. The implicit presupposition on the side of the interviewer is that it would not only be possible to find out about a person's identity by asking about ethnicity, language, customs and traditions, but also that applicants should naturally be interested in knowing 'more' about all of these things, as well as about their country of origin, even if they had fled from it as a young child, as the applicant had claimed. Moreover, a general and particularly dominant assumption in asylum procedure concerning minorities is that an ethnic group can always be assigned its own language. The applicant's claim regarding not knowing 'Rohingya' (language) makes the interviewer suspect that he is actually a citizen of Bangladesh. But any assumption regarding a direct correlation of one ethnic group to one language is misguided, as has been known in legal anthropology at least since

James Clifford's seminal study *Identity in Mashpee* (Clifford 1988). In his courtroom ethnography, Clifford showed how difficult it was for the 'Mashpee Indians' to have their identity as 'Indians' recognised as they had neither 'ancestral' land nor their own language, religion or political structure to showcase. Clifford referred to the Mashpee as a 'borderline case' where the court dealing with their case did not reveal facts as much as conduct an experiment in translation between identity assertions and attributions. Back to the case at hand, the applicant, via his lawyer, later submitted a half-page typed document that he must have copied from somewhere or received from someone, which indicates that the 'Rohingya language' is called 'Rohingyalish' and was first written 'back to 300 years and used Arabic Scripts', but that currently the Latin alphabet is being used. In submitting this document at a later stage of his asylum procedure, he tried to respond to (and thus acknowledge) the repeated official demand for a particular kind of knowledge – in this case, the very existence of a language even though he himself did not speak it.

The asylum interview is an encounter in which all parties are 'other' to one another. And, one could add, to a great extent they remain in this position even at the end of the interview. The shared interaction setting neither presupposes nor necessarily produces a shared horizon of knowledge, yet 'evidence' is nonetheless co-constructed. The linguistic anthropologists Sally Jacoby and Elinor Ochs define co-construction as 'the joint creation of a form, interpretation, stance, action, activity, identity, institution, skill, ideology, emotion, or other culturally meaningful reality' (1995: 171; emphasis removed), which does not necessarily presuppose or produce a bond or unity between the interaction partners. In legal anthropological and ethnomethodological literature, it has already been documented that asylum seekers are trying to answer in a way they think is expected from them (Campbell 2020; Dupret 2016; Good 2009). Likewise, the experiential knowledge of the caseworkers has been emphasised, drawing attention to the fact that asylum procedure involves both compliance with procedural rules and sometimes a wide margin of discretion on the part of caseworkers and judges (Affolter 2021; Kelly 2012). What has been less highlighted, however, is that in the asylum procedure not only is there no common knowledge background, but also the different knowledge backgrounds are asymmetrical to one another. Ronald Scollon refers to such forms of hierarchisation as 'vertical constructions' (Scollon 1976, cited in Jacoby and Ochs 1995: 172). While the person seeking asylum is in possession of secure knowledge about their personal history, even if it does not align with the categories called on in the interview, the caseworker is in possession of secure knowledge of the asylum procedure. However, state officials cannot dictate how their questions will be answered, and it often turns out that they have no way of evaluating the answers given by an interviewee, lacking contextual knowledge. While general law speaks of the 'penumbra of doubt' (Hart 1993: 12), which must be illuminated in order to achieve certainty and make 'objective' decisions, asylum procedure consists mainly of 'shadows' that make positivist jurisprudence difficult or even impossible (Dequen 2013: 453). Asylum interviews, especially in the case of stateless persons, are characterised from the outset by the fact that both parties in the interview lack secure knowledge about their respective counterparts. In addition to the lack of shared knowledge (factual on the one side; procedural on the other side), it is also not possible to refer

to a pre-existing common sense (see Schuster 2003). Instead, interviewers, translators and asylum applicants are 'doing procedure' (Scheffer et al 2010: 8), thereby 'literalizing' what will later be scrutinised 'for specific purposes of the legal establishment' (2010: 7). In participating in this unequal encounter, all parties assume a 'particular interactional status as "collector[s] of facts" or "evidence-maker[s]"' (2010: 91).

What could the role of a legal anthropologist be in such a setting?

Anthropological Knowledge and Legal Categories

Anthropologists sometimes find it difficult to use their knowledge in court settings, where the court imposes formal and strict parameters. My COI reports are written in the form of answers to specific questions that the claimants' lawyers want answered. As in the hearing situation between the state representative and the applicant, I am therefore also involved in the preparation of documents that are used by the claimants' lawyers to defend their case, but which I have to write for the court, not the side seeking my support. In my role as expert, I am therefore not party to the dispute but obliged to remain neutral. While colleagues already professionally active in this field before me helped me to acquire knowledge about asylum procedure, the genre of report writing and my putative role in it, I have tried to broaden this scope for interpretation and to identify gaps in the procedure within which I believe I can act effectively as an anthropologist. In addition to gaining insight into documents that I would otherwise not be able to access and that I evaluate from an academic perspective as I have done here, what fascinates me most about this expert role – and where I believe the greatest promise lies – is the opportunity to reflect their own categorising practices back to the lawyers and judges. This perspective refers less to factual knowledge about certain regions or ethnic groups or the plausibility of an individual's biographical 'story', and more to anthropologically informed statements about the effectiveness and applicability of (legal) categories, especially when it comes to the question of the interpretation of these categories in the alleged 'home state' of the applicant. While caseworkers are bound to assess credibility according to indicators laid out by The European Union Agency for Asylum (2023), in my reports I am exclusively allowed to make a direct statement on the plausibility of an applicant's account. However, COI experts are regularly asked what might happen if the asylum seeker were to be sent back to their presumptive home country. As states are obliged by international treaty not to expel asylum seekers to countries which they consider unsafe, where they could face structural discrimination, imprisonment, torture or even death, I emphasise in my reports how likely I consider it to be that, under the given uncertain (knowledge) circumstances, this person *will be classified* as Rohingya or as a member of another ethnic minority in the country of return, effectively sidelining the question of who they truly 'are'. In most of those cases where I have argued that there is a 'high probability' that this will occur, it seems to have been convincing enough to overturn a decision by the Home Office or even a First-tier Tribunal.

However, essentialised understandings of ethnicity (or 'race') continue to prevail in judges' decisions. Even if I base my argumentation exclusively on the constructivist

paradigm, the category of 'ethnicity' or 'race' is often maintained in an essentialised understanding when the judges overturn the rejection of the asylum decision. In the case discussed above, for example, the wording of the judge's decision was as follows: 'I am satisfied on the evidence before me that the appellant is Rohingya.' However, I had not written anything about the man's identity being Rohingya in any part of my expert report. Instead, I had argued that I considered it likely that the applicant *will be categorised* as Rohingya if sent to Bangladesh. With regard to this risk, the judge also found that '[t]here is a real risk that his true ethnicity will be exposed. If he is asked about his true ethnicity, he cannot be expected to lie about it. If he tells the authorities that he is Rohingya he is at real risk of forcible repatriation to Burma.' Here the judge had included risk-related passages from my expert report, but added his understanding to it, namely 'true ethnicity' (as opposed to a merely claimed one?). As soon as judicial decisions are argued in writing, it seems, the anthropological knowledge consulted for the judgment 'disappears' behind the established legal categories. Whereas Bruno Latour has formulated in *The Making of Law* that '[j]ustice only writes law through winding paths . . . For her to speak justly, she must have hesitated' (2010: 151–152), in writing their asylum decisions, judges need to demonstrate that they are 'satisfied' by the evidence they have seen. It is through drawing on or re-invoking essentialised notions of identity, ethnicity and culture that they demonstrate that knowledge has been secured. It remains the task of an applied legal anthropology to shed light on this practice and understand why this is the case.

The position I have advocated for thus lies between the two groups I have outlined in the beginning: I acknowledge that there will likely always be limits to judges' capacity to take anthropological expert knowledge into account, but I do insist that there is a positive way for anthropological experts to apply their knowledge without falling back to the 'cultural defence'. Similarly, for example, Susan Bibler Coutin and Véronique Fortin write that '[p]racticing this craft with care is one way to counter the otherwise alienating and state-centric nature of bureaucratic inscription' (2023: 24). There are also cases in which an anthropological concept of 'culture' was explicitly acknowledged by the judges (see Thuen 2004). However, my impression after ten years of working as a COI expert is that even when judges manage to take account of anthropological reasoning, the law rarely 'liberates itself from some of the positivism' as Trond Thuen could argue from his material (2004: 283). Rather, judges translate their newly acquired knowledge into *new* bureaucratic inscriptions.

Conclusion

It is necessary to understand the textual documentation of an asylum interview as an unequal encounter and yet a co-constructive practice. In this article I have set out to elaborate the context in which asylum interviews are conducted, highlighting the fact that all involved parties remain 'other' to one another as there is no shared knowledge they can draw on. This is, at the same time, the reason why interviewer and interviewee resort to co-constructing 'evidence', as my ethnomethodological interpretation has shown. As the emphasis rests on co-constructing a 'case', I have also argued

that asylum procedure de-individualises *all* participants, including the judges who speak in the name of 'the law'. The consequence of this asymmetrical encounter is of course felt most by the applicant who disappears behind the 'case' they help constitute unknowingly. In drawing on this 'case material' as a country of origin expert, I have discussed my ethical predicament of not wanting to contribute further to this asymmetry by obtaining informed consent from an individual who has ceased to figure as such in the course of the asylum procedure. I have further laid out that I do consider the role of applied anthropology in this area of expertise useful when it is able to discuss the efficacy of legal categorisation itself.

Whether anthropologists can have an impact on judicial reasoning or not has less to do with the quality of their reports than with the way the law is structured. In the end, it is the repealed dismissal of an asylum claim that proves whether the material provided by anthropologists will have been considered 'evidence' enough. When it comes to applied anthropology in the asylum context, it is not important whether our knowledge is openly acknowledged but whether it is allowed to make a difference.

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JUDITH BEYER is Full Professor of Social and Political Anthropology at the University of Konstanz in Germany. She specialises in legal and political anthropology and has conducted long-term ethnographic fieldwork in Central Asia and Southeast Asia. She has published two monographs based on this research, *The Force of Custom* (Pittsburgh University Press, 2016) and *Rethinking Community in Myanmar* (University of Hawai'i Press, 2024). In recent years, she has carried out research with expert activists in Europe in the fields of human rights law, asylum and statelessness. Email: judith.beyer@uni-konstanz.de; ORCID: 0009-0009-2593-6968.

Notes

1. The Labour Party. X social media post, 10 February 2025. https://x.com/UKLabour/status/1889912833854758979 (accessed 23 May 2025).
2. See, for example, Coffey (2003), Kobelinski (2015), Mitsch (2020), Mitsch and Reiling (2018), Pine (2020), Rose and Given-Wilson (2021), Vetters and Foblets (2016) and Zenker (2016).
3. Only the so-called *de jure* stateless people, who are formally recognised as stateless by a state, enjoy encompassing rights comparable to those of other officially recognised refugees and receive official documentation.
4. Official statistics provided by the British Government. Spreadsheet 'Asylum claims and initial decisions detailed datasets, year ending March 2025'. https://www.gov.uk/government/statistical-data-sets/immigration-system-statistics-data-tables#asylum (accessed 25 May 2025).

5. This procedure is in line with that of my anthropological colleagues working in the British or the American asylum systems (Bibler Coutin and Fortin 2023; Good 2004, 2007; Höhne 2016; Kelly 2012).
6. See also Michael Herzfeld's (2025) recent critique of informed consent. In all the cases in which a judge has declared a case 'confidential', I deleted the entire file after submitting my report and do not draw on this data in any way.
7. Burma became part of British India in 1886. It was the last country added to the British empire. The country achieved independence in 1948 and was renamed Myanmar in 1988, but the UK government continues to refer to it by its colonial name. While Rohingya were citizens of Burma in the past, in 1982 a new citizenship law rendered them stateless. Pogroms against the ethnic minority occurred in 1978, 1991 and from 2016 onwards. The refugee camps in Bangladesh, where roughly one million Rohingya live, are world-wide the largest. Rohingya are discriminated against in both Myanmar and Bangladesh.

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Les entretiens d'asyle au Royaume-Uni : le problème de preuves et la possibilité de l'anthropologie appliquée

Résumé : Les contrôles de preuves et de crédibilité sont une partie importante du processus d'asyle au Royaume-Uni. Mais les réponses de candidats pendant les entretiens d'asyle ne peuvent pas être mesurées contre une norme indépendante. Ceci est le cas, surtout si le candidat se déclare apatride. En s'appuyant sur l'ethnométhodologie, nous analysons des entretiens d'asyle et nous montrons les différentes façons dont nous pouvons considérer les preuves comme le résultat d'une co-construction asymétrique. En conséquence, le candidat individuel va disparaître et un 'cas' sera établi. Les anthropologistes qui écrivent des rapports sur le pays d'origine, et qui s'appuient sur 'la documentation de cas' pour des tribunaux, peuvent souligner les asymétries dans la création de preuves et questionner les catégorisations à la base des opérations d'état. L'article contribue aux débats actuels sur le rôle des anthropologues et leur savoir d'experte devant les tribunaux.

Mots-clés : anthropologie appliquée, asyle, condition apatride, preuves, Royaume-Uni