

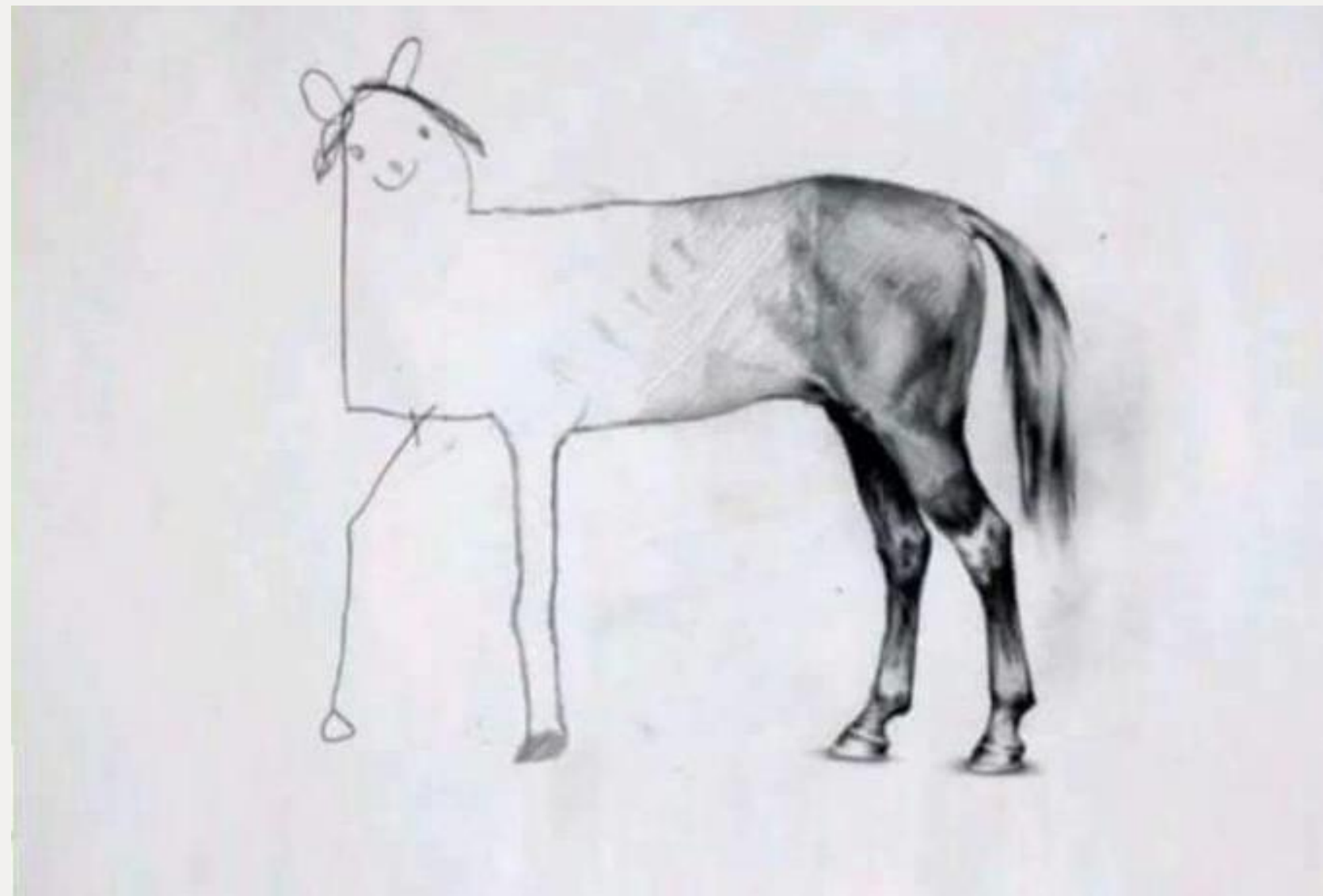
The Role of Culture in Sentencing & Penal Decision-Making, ESC WG Seminar, Copenhagen 2025

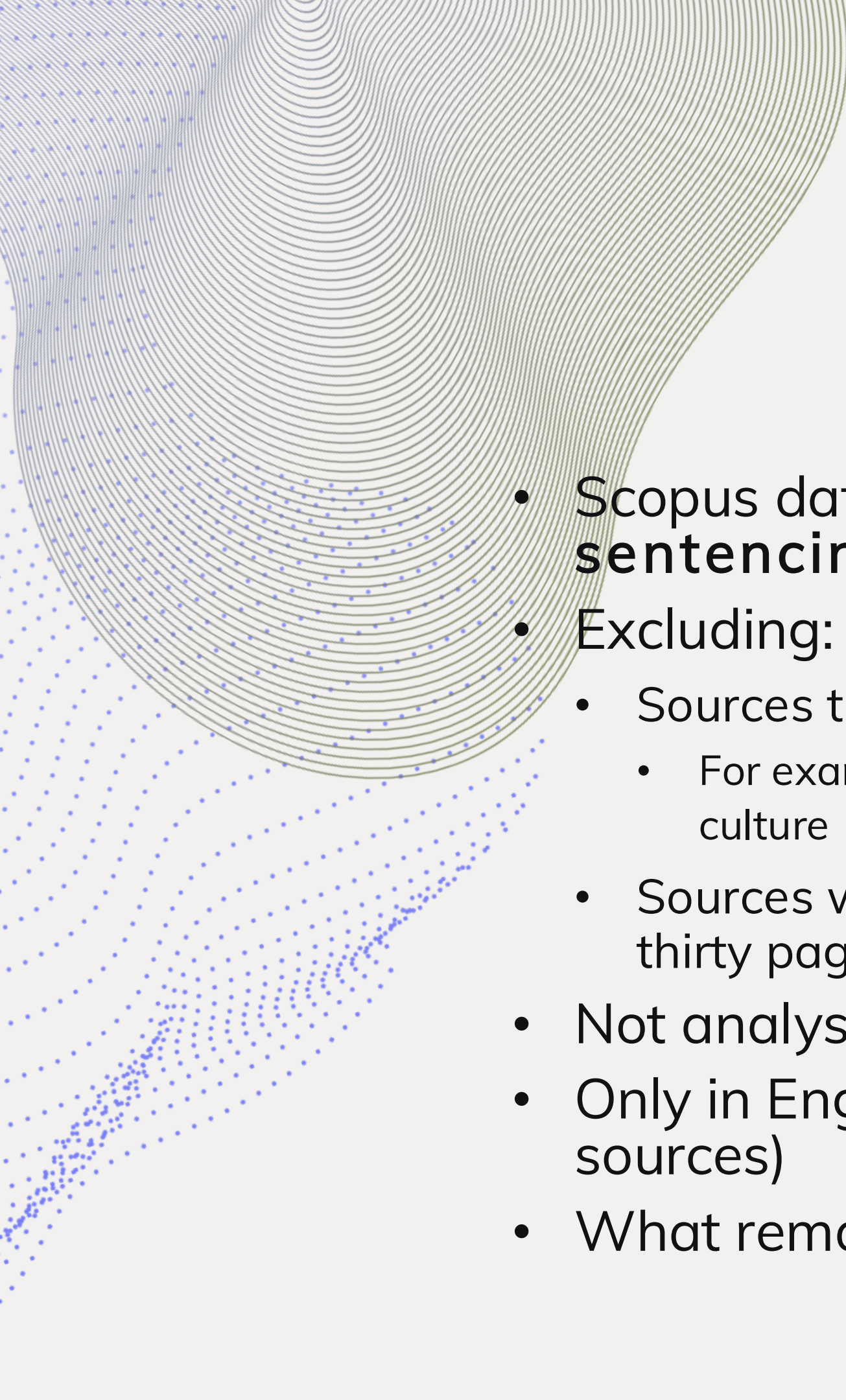
Cultural Clarity?

Mapping How Sentencing Research
Talks About 'Culture'

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Our presentation





Methodology

- Scopus database: 367 articles, books and chapters that mention **sentencing+cultur***
- Excluding:
 - Sources that speak about a different topic:
 - For example: Federal Sentencing Guidelines for Organizations and the corporate culture
 - Sources where sentencing or culture is mentioned only once or twice in thirty pages
- Not analysing books and book chapters yet
- Only in English (with a handful of French, Spanish and Italian sources)
- What remains is 200 sources



How Culture Appears in Sentencing Literature?

Culture used as an **explanandum** and an **explanans**.

1 As broad societal context

2 As part of the legal/penal system's logic

3 As internal courtroom/ institutional practice

- Each of these levels includes multiple thematic uses and assumptions
- We provide a preliminary typology to guide analysis and clarify meaning

1. Culture as Broad Context

How societal or national culture frames sentencing systems

1.1 Political and national culture:

- American, Chinese, Islamic, European cultures?
- Often linked with “society” or “politics”

1.2 Societal and normative culture:

- Cultural norms influencing sentencing decisions
- “Black box” explanations: culture, society, politics → lumped together

*The failure to retain any of these items might be indicative of **cultural differences**, such as the United States being a more individualist culture, or in specific differences in the social construction of hate crime between the United States and United Kingdom.*

1. Culture as Broad Context

*Ireland's economic growth from the late 1990s prompted sustained and diverse inward migration, resulting in substantial changes in the population and reshaping the **social and cultural landscape**. These shifts have also been visible among those processed by the criminal justice system, with a marked increase in the number of non-Irish nationals committed to Irish prisons.*

Brandon & O'Connell, 2018

1.3 Multiculturalism, minority cultures, postcolonial context:

- The presence of minority or Indigenous cultures
- Concerns over stereotyping whole populations
 - E.g., Islamic culture, Black culture, First Nations

1.4 Comparative cultural explanation:

- Culture used to explain cross-jurisdiction differences
 - E.g., sentencing in India vs. Germany

2. Culture as Legal or Penal Framework

Culture embedded in legal systems and institutional logics

- Legal culture
- Penal culture
- Correctional culture
- Culture of sentencing
- Culture of punishment

*Lithuania is at an important crossroad of its further development, which can lead to an approximation to Western European styles of sentencing or to an insistence on **the old Soviet-style penal culture**.*

2. Culture as Legal and Penal Framework

*Iceland's prison rate is very low; Iceland is small and homogeneous which may offer **cultural or structural pre-conditions** for a positive penal system. All this makes it interesting to consider whether the penal exceptionalism thesis (Pratt and Eriksson 2011) actually extends to Iceland. To what extent does Iceland fit the Nordic mould of penal practice?.*

Pakes & Gunnlaugsson, 2018

*Specifically, we explore the possibility that many of the ideas, assumptions, and policies that have historically buttressed mass incarceration persist and continue to enjoy **cultural traction**. We also consider the possibility that the **cultural dynamics** surrounding the reform process itself may work to legitimate and solidify some of the practices and policies that fuel mass incarceration.*

Beckett, Reosti & Knaphus, 2016

*The present study adds to this literature by examining imprisonment and recidivism in Finland, a nation characterized by an exceptionally **moderate penal culture**.*

Sirén & Savolainen, 2013

3.1 Culture as Institutional Practice

Culture operating inside courts and legal institutions

3.1 Organisational, Institutional, Court Culture

- Describes internal institutional practices and dynamics through which sentencing processes are brought to life
 - „judicial culture“, „prosecutorial culture“, „local prison culture“, „distinct organisational culture“

*Asking for a social report could implicitly suggest that the judge is ‘laying his cards on the table’, which would hamper free and autonomous decision making. In a **sentencing culture** that values the independence of the judiciary highly, this can thus be a weighty argument against social reports.*

3.1. Culture as Institutional Practice

Prior work on **military culture** also suggests the military embraces a **masculine “combat-warrior” stereotype** of the professional soldier, with more combat-oriented career fields engendering greater respect and deference (Dunivin, 1994). Although career field status is not generally a legally relevant variable (Oler, 2005), a military defendant’s specific occupation may impact court actor attributions derived from this good soldier paradigm.

Breen & Johnson, 2017

This article explores the relative contributions to sentencing decision making of a **stable court culture** and immediate situational factors intervening in particular cases.

Rumgay, 1995

3.2 Culture as Legal Subject

3.2 Culture as a „subject“ in court

- Crimes against cultural heritage
- Formal recognition of culture in sentencing and its role as a mitigating factor

*[The judge] issued a landmark opinion in the case, basing his decision to exceed the federal sentencing guidelines by five levels on the potential harm inflicted on society as a whole by the theft of “**rare and unique elements of our cultural heritage**”.*

Ashton, 2003

3.2. Culture as Legal Subject

For the most part, the evidence suggests that the indicators of [Fetal Alcohol Spectrum Disorders] are **universal across all racial and cultural groups**. These indicators are, however, often obscured in individuals from certain backgrounds, due to the salience of what might be termed **"cultural overshadowing"**. This could be considered a form of unconscious or institutional discrimination, in that it **denies criminal defendants from certain cultural backgrounds the opportunity to have courts take into account** the possibility that their alleged or proven offenses were affected by serious brain-based impairments in reasoning and judgment.

Mullally, McLachlan, Jewell, Viljoen & Rudin, 2023

A particularly interesting case in this regard is the national minority Roma, seen as an example of a Swedish group that brings other normative systems into the state legal system through their distinct legal culture. /.../ it is demonstrated that **accounts of Roma legal culture face 'legal silencing' by the court – it is either not given significance or is given a form of attention that essentializes and alienates the culture**. An analysis into why this legal silence occurs and into the possibilities for taking legal culture into account is provided.

Nafstad, 2018

Cultural Clarity?

Conceptual Confusion

Culture is rarely theorised and is inconsistently used.

- rarely used as a theoretical lense (with some exceptions)
- invoked often, but usually vaguely, without clear conceptual grounding or definition
- meaning shifts across texts, jurisdictions, and disciplines

There is conceptual slippage.

- often used interchangeably with society, politics, or ideology

There's also normative risk.

- “culture” can carry the baggage of a civilising discourse: anything outside the mainstream may be framed as deficient, deviant, or uncivilized
- Implicit stereotyping and implicit biases

Cultural Clarity?

Conceptual Confusion

The concept is elastic—perhaps too much so?

- a wide range of practices are described as cultural, while much legal and institutional activity is not
- it risks meaning everything – and thus, nothing

Yet openness creates potential.

- allows researchers to incorporate neglected dimensions – identity, emotion, power, resistance
- is this a strength?

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