

Introduction: Why a History of Cultural Expertise?

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This forum develops within the framework of the European Research Council's project titled "Cultural Expertise in Europe: What Is It Useful For? (EURO-EXPERT). EURO-EXPERT aims to reformulate the emergent notion of cultural expertise as a concept that might extensively account for the use of social sciences in dispute resolution and in connection with rights claims. A threshold definition of cultural expertise was formulated as "the special knowledge that enables socio-legal scholars, or, more generally speaking, cultural mediators—the so-called cultural brokers—to locate and describe relevant facts in light of the particular background of claimants and litigants and for the use of the court."¹ However, this definition is too restrictive because it does not account for the broader range of out-of-court procedures in which social sciences knowledge is applied to the resolution of conflicts, litigation, and the formulation of rights. I argue that a strictly legal approach to cultural expert witnessing undermines the array of sociolegal instruments that could be better appraised with the help of a broad concept of cultural expertise. Hence, the need for an integrated definition of cultural expertise that covers the larger range of phenomena explored throughout sociolegal studies.²

1. Livia Holden, "Introduction: Reflexivity, Culture and Ethics," in *Cultural Expertise and Litigation: Patterns, Conflicts, Narratives*, ed. Livia Holden (New York: Routledge, 2011), 2.

2. Livia Holden, "Cultural Expertise and Socio-Legal Studies: Introduction," and "Beyond Cultural Expert Witnessing: Toward an Integrated Definition of Cultural Expertise," in *Cultural Expertise and Socio-Legal Studies: Special Issue*, ed. Livia Holden (New York: Emerald Publishing, 2019), 1–12, 181–200.

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This forum is one of the outcomes of the workshop entitled “Cultural Expertise in Ancient and Modern History” held in Oxford in July 2018, and aims to make explicit the interdisciplinary components of cultural expertise from a historiographical perspective in order to open up the discussion to the history of law. It must be pointed out that cultural expertise, in the form of expert witnessing involving the appointment of social scientists in legal proceedings, is not different from other kinds of expert witnessing. Expert witnessing by social scientists, in particular, can be traced back for centuries. For more than 200 years, social scientists have played an active role in policy making in the United Kingdom and the United States. Going further back, to the nineteenth century, one sees the appointment of social scientists as expert witnesses, especially anthropologists for matters involving First Nations and Aborigines in specialized fields of law, such as native land titles in America and Australia. In contemporary management of migration fluxes, the appointment of anthropologists as country experts has become increasingly frequent in common law and civil law countries for immigration proceedings and in other fields of law as well. Sociolegal studies and legal anthropology have delved into cultural expert witnessing. However, it is still difficult to extensively and systematically appraise the involvement of social sciences in dispute resolution, lawmaking, and policy making from an all-encompassing perspective.

This forum aims on the one hand to scrutinize whether the emergent concept of cultural expertise can diachronically account for in-court and out-of-court resolutions of conflicts in the history of law, and on the other hand to synchronically trace the historical developments of contemporary trends of cultural expertise. This forum adopts a new interdisciplinarity, which not only combines history and law but also uses the tools of anthropology in order to overcome some of the challenges of the global historiographical perspective of the twenty-first century. Authors in this forum share the view that European legal histories cannot be understood in isolation, and some have experimented with the use of cultural expertise as a sociolegal concept that might contribute to bridging the gaps that conventional legal history has sidelined, in particular the difficult commensurability between common law and civil law and the problems of the cultural translation of law.³

The concept of cultural expertise in the history of law is explored from diachronic and synchronic perspectives in ancient and contemporary

3. Thomas Duve, “Global Legal History: Setting Europe in Perspective,” in *The Oxford Handbook of European Legal History*, ed. Heikki Pihlajamäki, Markus D. Dubber, and Mark Godfrey (Oxford: Oxford University Press, 2018).

history. Cultural expertise is scrutinized as a historical sequence of narratives and discourses, which connect historical sources with everyday life. Thus, the history of cultural expertise unfolds from its experimental applicability to the arguments developed by historians in order to interpret historical evidence.⁴ By shifting the focus from the difficult comparison of European legal cultures to global similarities and differences that include the reflexive approach of anthropology, this forum aims to show that a new interdisciplinarity including sociolegal tools such as the emergent concept of cultural expertise can contribute to a better understanding of global law. Authors in this forum focus on what social actors think culture, both synchronically and diachronically, is in dispute resolution; namely, what are the documents that contribute to the construction of evidence? What kinds of information are omitted or included? How historiographic narratives have changed with the passage of time? Which social actors are officially acknowledged as experts in the construction of evidence? Why have certain narratives acquired legal status whereas some others have been discredited over time? Contributions range from Roman law to modern interpretations of ancient law in China, and include overviews of cultural expertise in Iran and colonial India, but also retrace the contemporary criticism toward applied anthropology, the unholy alliance between some social scientists and colonial justice, and the attempts to use culture for political interference.

4. Andrea Whittle and Jason Wilson, "Ethnomethodology and the Production of History: Studying 'history-in-action,'" *Business History* 57 (2015): 1–23.