

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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43 This forum is one of the outcomes of the workshop entitled “Cultural
44 Expertise in Ancient and Modern History” held in Oxford in July 2018,
45 and aims to make explicit the interdisciplinary components of cultural
46 expertise from a historiographical perspective in order to open up the dis-
47 cussion to the history of law. It must be pointed out that cultural expertise,
48 in the form of expert witnessing involving the appointment of social sci-
49 entists in legal proceedings, is not different from other kinds of expert wit-
50 nessing. Expert witnessing by social scientists, in particular, can be
51 traced back for centuries. For more than 200 years, social scientists have
52 played an active role in policy making in the United Kingdom and the
53 United States. Going further back, to the nineteenth century, one sees
54 the appointment of social scientists as expert witnesses, especially anthro-
55 pologists for matters involving First Nations and Aborigines in specialized
56 fields of law, such as native land titles in America and Australia. In con-
57 temporary management of migration fluxes, the appointment of anthropol-
58 ogists as country experts has become increasingly frequent in common law
59 and civil law countries for immigration proceedings and in other fields of
60 law as well. Sociolegal studies and legal anthropology have delved into
61 cultural expert witnessing. However, it is still difficult to extensively and
62 systematically appraise the involvement of social sciences in dispute reso-
63 lution, lawmaking, and policy making from an all-encompassing
64 perspective.

65 This forum aims on the one hand to scrutinize whether the emergent
66 concept of cultural expertise can diachronically account for in-court and
67 out-of-court resolutions of conflicts in the history of law, and on the
68 other hand to synchronically trace the historical developments of contem-
69 porary trends of cultural expertise. This forum adopts a new interdisciplin-
70 arity, which not only combines history and law but also uses the tools of
71 anthropology in order to overcome some of the challenges of the global
72 historiographical perspective of the twenty-first century. Authors in this
73 forum share the view that European legal histories cannot be understood
74 in isolation, and some have experimented with the use of cultural expertise
75 as a sociolegal concept that might contribute to bridging the gaps that con-
76 ventional legal history has sidelined, in particular the difficult commensu-
77 rability between common law and civil law and the problems of the cultural
78 translation of law.³

79 The concept of cultural expertise in the history of law is explored from
80 diachronic and synchronic perspectives in ancient and contemporary
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83 3. Thomas Duve, “Global Legal History: Setting Europe in Perspective,” in *The Oxford*
84 *Handbook of European Legal History*, ed. Heikki Pihlajamäki, Markus D. Dubber, and
Mark Godfrey (Oxford: Oxford University Press, 2018).

85 history. Cultural expertise is scrutinized as a historical sequence of narra-
86 tives and discourses, which connect historical sources with everyday life.
87 Thus, the history of cultural expertise unfolds from its experimental appli-
88 cability to the arguments developed by historians in order to interpret his-
89 torical evidence.⁴ By shifting the focus from the difficult comparison of
90 European legal cultures to global similarities and differences that include
91 the reflexive approach of anthropology, this forum aims to show that a
92 new interdisciplinarity including sociolegal tools such as the emergent con-
93 cept of cultural expertise can contribute to a better understanding of global
94 law. Authors in this forum focus on what social actors think culture, both
95 synchronically and diachronically, is in dispute resolution; namely, what
96 are the documents that contribute to the construction of evidence? What
97 kinds of information are omitted or included? How historiographic narra-
98 tives have changed with the passage of time? Which social actors are offi-
99 cially acknowledged as experts in the construction of evidence? Why have
100 certain narratives acquired legal status whereas some others have been dis-
101 credited over time? Contributions range from Roman law to modern inter-
102 pretations of ancient law in China, and include overviews of cultural
103 expertise in Iran and colonial India, but also retrace the contemporary criti-
104 cism toward applied anthropology, the unholy alliance between some
105 social scientists and colonial justice, and the attempts to use culture for
106 political interference.

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