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The rise of cultural expertise in litigation

Livia Holden Malvika Seth Ashwin Mishra Max Steuer

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1 Introduction

With the proliferation of academic publishing and new forms thereof,¹ new concepts are introduced in massive proportions, and the ‘graveyard of concepts’² is growing accordingly. Only a few manage to gain lasting traction and open new avenues of scholarly inquiry. Most of these present in globally disseminated academic journals in the English language originate and have been initially applied to social realities in Europe and North America.

‘Cultural expertise’ as defined in 2011³ and then re-defined in 2020⁴ is one exception to this trend. Its origin lies explicitly in the legal-anthropological study of South Asia, and only then has it proliferated to scrutinise European and North American realities. This origin is in line with its normative ambition to contribute not only to the resolution of conflicts but also to the elimination of inequalities and discrimination, at times perpetuated by partisan decisions. Moreover, it relies on the rationalist belief in the possibility of knowledge-generation and its dissemination beyond academia to inform decision making practices. This belief is, at the same time, not denying the many challenges entailed in attaining *objective* or *uncontested* knowledge about complex societal realities.⁵

¹ Petar Jandrić and Sarah Hayes, ‘The Postdigital Challenge of Redefining Academic Publishing from the Margins’ (2019) 44(3) *Learning, Media and Technology* 381.

² Christopher Hobson, ‘Democracy’s Conceptual Politics: Liberalism and Its Others’ (2021) 8(2) *Democratic Theory* 97, 102.

³ Livia Holden, *Cultural Expertise and Litigation: Patterns, Conflicts, Narratives* (Routledge 2011) 2.

⁴ Livia Holden, ‘Cultural Expertise and Law: An Historical Overview’ (2020) 38(1) *Law and History Review* 29, 45.

⁵ Emphases added.

As illustrated by Figure 1,⁶ occasional references to the phrase ‘cultural expertise’ have been present in earlier English-language scholarship. Before 2011, they have been used only sporadically without a consolidated definition, for example, to denote expertise in the arts,⁷ business practices,⁸ educational psychology,⁹ and behavioural studies.¹⁰ Today, the post-2011 origin of cultural expertise in the disciplines of law and anthropology overshadows all alternative conceptualisations. The slight decrease of references after 2011 is accompanied by a steady rise after 2015, which may be expected to continue after the final available data point in 2019, not least given several journal special issues and edited collections having been published dedicated to this topic.¹¹

This Special Section, the principal outcome of a collaborative research project contributes to this line of scholarship. It marks more than a two-year collaboration between the French National Center for Scientific Research (CNRS) and Paris 1 Panthéon Sorbonne in Europe, and Jindal Global Law School in India,¹² and follows up on an international hybrid workshop held at the Jindal Global Law School in December 2022, funded by the Independent Social Research Foundation. Offering a collection of contributions engaging with the modern concept of cultural expertise in a regionally and generationally diverse manner, it encompasses three novel elements. Firstly, it invites the concept of cultural expertise to travel to jurisdictions where it has been scarcely, if at all, invoked so far. Instead of embracing a *West* versus the *rest* dichotomy, it highlights the *in between*s, particularly small states in Central Europe (Slovakia) and South Asia (Nepal), which often remain understudied compared to their larger and more populous counterparts.¹³ Secondly, it underscores

⁶ ‘Cultural Expertise’ (*Google Books Ngram Viewer*). https://books.google.com/ngrams/graph?content=cultural+expertise&year_start=1950&year_end=2019&corpus=en-2019&smoothing=3. Accessed 11 December 2023. It needs to be noted that not all references are captured by this measure and so it counts only as an introductory estimate. The vertical axis displays the proportion of references to the bigram ‘cultural expertise’ of all the bigrams contained in Google’s ‘sample of books written in English’. See ‘About Ngram Viewer’. <https://books.google.com/ngrams/info>. Accessed 11 December 2023.

⁷ R A Sharpe, ‘Art and Expertise’ (1985) 85(1) *Proceedings of the Aristotelian Society* 133, 133.

⁸ Fortunat F Mueller-Marki, ‘Executive Talent Scouting’ (1994) 5(5) *Journal of European Business* 16.

⁹ Allen E Ivey, ‘Cultural Expertise: If the Counsellor Is to Become a Teacher, Toward What Should That Teaching Be Directed?’ (1977) 12(1) *Canadian Journal of Counselling and Psychotherapy* 23.

¹⁰ Roy G D’Andrade, ‘Modal Responses and Cultural Expertise’ (1987) 31(2) *American Behavioral Scientist* 194.

¹¹ Edited collections: ‘Special Issue “Cultural Expertise: An Emergent Concept and Evolving Practices”’ (2019) 8 *Laws*; ‘Special Issue: Cultural Expertise and Socio-Legal Studies’ (2019) 78 *Studies in Law, Politics, and Society*; ‘Cultural Expertise and the Legal Professions’ (2021) 11 *NAVEIN REET: Nordic Journal of Law and Social Research*.

¹² Livia Holden and Malvika Seth, ‘Cultural Expertise and Litigation in South Asia and Europe’ (*Independent Social Research Foundation*). <https://www.isrf.org/fellows-projects/cultural-expertise-and-litigation-in-south-asia-and-europe/>. Accessed 8 December 2023.

¹³ Emphases added.

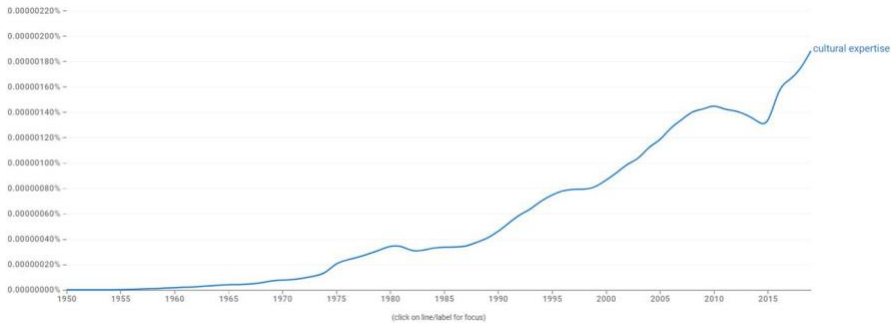


Figure 1 Google NGram for the search term ‘cultural expertise’ (1950—2019).

the breadth of applicability of cultural expertise by encompassing contributors from across the social sciences, law, and humanities. While the interdisciplinary character of cultural expertise has been pointed out earlier,¹⁴ law and anthropology tend to occupy a prominent position therein.¹⁵ This Special Section does not prioritise a particular discipline and encompasses authors with backgrounds in sociology, ethnology, law, political science, and anthropology. Thirdly, the present collection is the first to offer a dedicated reviews section of recently published books that engage with cultural expertise, thus underscoring the increasing use and frequency of book-length studies more or less explicitly engaging with this concept.

2 Cultural experts beyond expert witnesses

Several contributions of the Special Section highlight that the formal, jurisdiction-specific and ritualised role of the expert witnesses may obscure more subtle but empowering pathways through which cultural expertise surfaces in legal discourses and social mobilisation more broadly. One of these is Indigenous expertise: instead of perceiving those who both belong to and specialise on Indigenous histories and traditions only as witnesses in litigation processes, with their expertise *compromised* because of their belonging, Indigenous expertise is significant because of recognising the constitutive character of knowledge, where belonging alone does not *strip* the individual of expert authority.¹⁶

¹⁴ Livia Holden, ‘Introduction’ in Livia Holden (ed), *Cultural Expertise, Law, and Rights: A Comprehensive Guide* (Routledge 2023) 5.

¹⁵ Livia Holden, ‘Anthropologists as Experts: Cultural Expertise, Colonialism, and Positionality’ (2022) 47(2) *Law & Social Inquiry* 669. See also ‘Special Section: Cultural Expertise’ (2020) 122(3) *American Anthropologist* 584.

¹⁶ Emphases added. See also Noelle Higgins, ‘Indigenous Expertise as Cultural Expertise in the World Heritage Protective Framework’ (2021) 11 *NAVEIN REET: Nordic Journal of Law and Social Research* 79.

Johansson et al. focus on Indigenous litigation of Sami groups in Norway and Sweden. While both these countries are known as consolidated democracies with comparatively high fundamental rights standards,¹⁷ social mobilisation for rights remains necessary here as well, given that state may rely on superficial distinctions and shallow reading of international legal obligations that lead to denial of rights to Indigenous groups. Johansson et al. demonstrate both claims by focusing on two prominent cases of Sami rights before Norwegian and Swedish courts (2020 and 2021). The authors contribute with a dynamic account of Indigenous cultural expertise, where claims in its support become part of what they call a ‘strategic framing contest’ to persuade decision makers about the significance of Indigenous expertise for legal outcomes. Their article raises questions on the relatively greater openness of apex courts as opposed to lower-instance courts to cultural expertise, as well as the costs of connecting a community as a whole to particular traditions, as illustrated by the recognition of legal rights only of the reindeer-herding Sami communities.

Indigenous expertise outside Europe is discussed by Lieselotte Viaene’s research note with Indigenous communities in Nepal, as part of the European Research Council project ‘RIVERS’. She elucidates the out-of-court struggle of Indigenous Nepalese legal experts with the state to ‘respect and honour water and water bodies’, part of a broader trend towards recognition of rights of nature¹⁸ as well as Indigenous rights. Presenting areas for further planned study, Viaene’s discussion contributes methodologically as well, by underscoring the value of fieldwork in studies of cultural expertise.

A second pathway of cultural expertise beyond expert witnesses is that of translators and interpreters. Helena Tužinská’s study demonstrates, via the case of Slovakia, that translators and interpreters are required, in principle, to work in isolation from knowledge on laws and cultures, but they often act as *de facto* cultural experts. This may, depending on contextual specifics, hamper or enhance the quality of the proceedings and the rights of asylum seekers. Formal recognition of the cultural expertise of translators and interpreters and examination of its ethical aspects would enhance the quality of litigation and the social system.

3 Cultural expertise and coming to terms with the (antidemocratic) past

How to address the collective traumas of antidemocratic history of a society? While issues of transitional justice are studied extensively,¹⁹ few authors have utilised the framework of cultural expertise to specifically focus on the involvement of historians

¹⁷ For example, *Varieties of Democracy* lists Sweden and Norway as first and third country, respectively, on its Liberal Democracy index 2022. See V-Dem Institute, ‘Democracy Report 2022: Autocratisation Changing Nature?’ (*University of Gothenburg*, March 2022). https://v-dem.net/media/publications/dr_2022.pdf. Accessed 8 December 2023.

¹⁸ For example, Mihnea Tănăsescu, *Understanding the Rights of Nature: A Critical Introduction* (transcript 2022).

¹⁹ Ruti G Teitel, ‘Transitional Justice Genealogy’ (2003) 16 *Harvard Human Rights Journal* 69.

in the law, helping to reconstruct the path dependencies that shaped legal practices. In this Section, four of these are explored: the impact of colonial practices of the British empire in Kenya, the legacies of the ‘Mafia’ phenomenon in (southern) Italy, the international criminal investigation of the Cambodian genocide by the so-called *Khmer Rouge Tribunal*, and the resistance to colonialism-infused readings of internal law in Japan of the Meiji era.

Anmol Gulecha, in commenting on a case decided by the High Court of Justice of the United Kingdom, argues unequivocally in support of involving historians as cultural experts. In fact, she sees the latter as a necessary condition for meaningful litigation of ‘colonial-era crimes’, a rising area of litigation in contemporary times.²⁰ Moreover, such litigation, in her opinion, helps preserve and buttress the historical memory of the crimes, by serving as an impulse for further historical research.²¹

Anna Ziliotto shares Gulecha’s sentiment through a documentary study of three prominent trials with Mafia-type associations at Italian courts. As a whole, these trials pertaining to ‘historically rooted Italian mafias’ have encompassed growing prominence of cultural experts’ inclusion in the trials, as judges have recognised the value of the latter.²² Furthermore, Ziliotto highlights how historical knowledge may also be shared by investigative journalists and how more anthropological knowledge, otherwise more typically associated with cultural experts, has been developed during the Italian ‘mafia trials’ but not always recognised as such beyond legal proceedings.

In line with the multi-format nature of the Special Section, the significance of historical cultural expertise is explored, in addition to Ziliotto’s article and Gulecha’s case note, by two book reviews. The first one by Radhika Nair contributes to identifying the challenges of cultural expertise in international criminal law, via responding to Hinton’s book that chronicles his testimony before the *Khmer Rouge Tribunal*. This was an attempt to, through an extraordinary court that operated between 2003 and 2022, recognise and try the grave violations of international and domestic law during the Cambodian genocide. Nair argues that Hinton, in his narrative, demonstrates the mutually constitutive nature of law and culture. Hinton’s anthropological knowledge was, in Nair’s perspective, enhanced specifically thanks to the legalised setting. Here, the extraordinary court is not the sole actor,²³ but remains central nevertheless, as, in Nair’s words, it ‘creates and applies its own cultural system’. According to the review, Hinton’s book operates simultaneously at three levels: engaging with the content of the expert testimony, the unfolding of the proceedings of which the testimony is just one element, and the ways how an improved understanding of international criminal tribunals may be generated via public self-reflection of actors appearing before them.

²⁰ Maryam Kanna, ‘Furthering Decolonization: Judicial Review of Colonial Criminal Laws’ (2020) 70 *Duke Law Journal* 411.

²¹ On a similar note, see Max Steuer, ‘Cultural Expertise and Extreme Speech’ in Holden (ed), *Cultural Expertise, Law, and Rights* (n 14) and references therein.

²² At the same time, the authority of the judges as the final arbiters of ‘truth’ remains rarely contested in the courtroom, for example, Gil Eyal, *The Crisis of Expertise* (Polity 2019) Ch. 4.

²³ See also Mikkel Jarle Christensen, ‘Justice Sites and the Fight against Atrocity Crimes’ (2023) 48(4) *Law & Social Inquiry* 1399.

Secondly, Siddiqui and Rajput review Colombo's monograph devoted to the so-called *Maria Luz* incident, emerging from a claim of violation of fundamental rights of Chinese workers by the Peruvian ship owners adjudicated in Japan and through international arbitration. Compared to Holden's definition of cultural expertise, the reviewers adopt a broader, quite ambitious reading where international law, given its nature geared at resolving disputes beyond state borders, is inevitably intertwined with the demands for cultural knowledge. The dominance of Western readings of international law and the relative absence of experts interpreting it with background in non-Western jurisdictions, highlighted by TWAIL scholars,²⁴ has bearing on Colombo's interpretation of the *Maria Luz* litigations, as it explains the dangers of uncritical reception of international regulations with colonial origins. In turn, the resistance to them facilitated by cultural experts in the litigation and subsequent international arbitration has encouraged a boost in fundamental rights protection before the 'rights revolution' of the 20th century,²⁵ showing the benefits of cultural expertise in international legal argument.

4 Cultural expertise, agency, and responsibility

The third main thread of the Special Section builds on the premise that cultural expertise has power.²⁶ Cultural experts can have impact on the outcome of litigation, affecting at times not only individuals', but whole communities' lives and shape interpretive practice. However, as their credibility and authority depend on the recognition by surrounding epistemic communities, lawyers, judges,²⁷ and academics, the contributions connected through this thread point to the potential of cultural expertise to be associated with the relational dimension of power, *power with*, rather than *power over* or *power to*.²⁸

The perspective of a cultural expert to their commitments and broader responsibility is further discussed in Dhruv Kaushik's review of Ngin's monograph. Kaushik praises the book for its demonstration of the subjective sense of Ngin's responsibility vis-à-vis the asylum applicants when, as an academic, she was asked to evaluate the credibility of multi-layered identity claims. Echoing the role that, in Tužinská's account, may be played also by translators and interpreters, Kaushik raises the question to what extent standardisation of methods of inquiry is a necessity for responsible cultural expertise. As illustrated also by the proliferation of indicators and

²⁴ BS Chimni, 'Third World Approaches to International Law: A Manifesto' (2006) 8 *International Community Law Review* 3.

²⁵ For example, Gábor Halmái, 'Rights Revolution and Counter-Revolution: Democratic Backsliding and Human Rights in Hungary' (2020) 14(1) *Law and Ethics of Human Rights* 97.

²⁶ Steven Lukes, *Power: A Radical View* (Bloomsbury Publishing 2021).

²⁷ See an example of a unique public conversation between a judge and an expert witness in Hermine C Wiersinga, 'The Judge and the Anthropologist: Cultural Expertise in Dutch Courts' (2022) 11 *NAVEIÑ REET: Nordic Journal of Law and Social Research* 151; Martijn de Koning, 'An Anthropologist in Court and Out of Place: A Rejoinder to Wiersinga' (2022) 11 *NAVEIÑ REET: Nordic Journal of Law and Social Research* 169.

²⁸ Emphases added.

measurements of human rights,²⁹ this debate resembles that between problem-solving and critical theorists, where Ngin's more personalised account offers a useful counterpart to the *distanced* expert merely collecting and analysing data and presenting their results.³⁰

Ilenia Ruggiu's book, reviewed by Sai Priya Chodavarapu, speaks to this contrast by proposing a more rigorous 'cultural test' to assist the resolution of conflicts involving cultural claims. However, the important difference is that Ruggiu focuses on the perspective of the judge as a cultural expert. While, as Ziliotto shows, judges have limited resources to become cultural experts themselves, especially if they have not held previous academic specialisation of the sort, and they often acknowledge this limitation, they face an even heavier burden than the cultural experts in presenting their findings in objectifiable terminology. To address this dilemma, Chodavarapu proposes the institutionalisation of the 'second opinion' which, while it does not guarantee objectivity, contributes to the search for truth³¹ and, at least in case of consensus between cultural experts, reduces the degree to which their reports and testimonies may be challenged.

Even multiple opinions, however, may not exhaust the limitations stemming from an 'external point of view'³² if the experts are not themselves hailing from the community whose member or members are affected by the results of the proceedings. In their review essay of a special section on cultural expertise published in *American Anthropologist*, Aishwarya Singh and Meenakshi Ramkumar argue that cultural expertise still carries the risk for 'claim-enhancing complicity'. While it may help recognise the claims of the marginalised, it does so by essentialising them and at times even explicitly isolating them from the broader political community.³³ Singh and Ramkumar praise several contributions to the special section in *American Anthropologist* for unpacking this type of complicity, but urge for more attention towards another, 'claim-dismissing' type of complicity which, in their view, is far from historical relevance only. They develop the initial observation articulated by Kaushik's review on the limited reflections on cultural expertise in India³⁴ by invoking several Indian cases pertaining to recognition of tribal identities as forms of Indigenous claims, where claim-dismissing complicity has manifested by the Indian state and courts. This type of complicity can be observed when the law sets excessively high bars for demonstrating belonging to Indigenous communities, which, in turn, leads to a *de facto* denial of entitlements that the legal system formally claims to grant to members of these communities. Similarly to Tužinská's discussion of

²⁹ See for example Sally Engle Merry, 'Measuring the World: Indicators, Human Rights, and Global Governance: With CA Comment by John M. Conley' (2011) 52(S3) *Current Anthropology* S83; Nicole Stremlau, 'Developing Bottom-up Indicators for Human Rights' (2019) 23(8) *The International Journal of Human Rights* 1378.

³⁰ Emphases added.

³¹ For example, Erik Barendt, *Freedom of Speech* (Oxford University Press 2005) Ch. 1.

³² Herbert LA Hart, *The Concept of Law* (3rd edition, Oxford University Press 2012) 89.

³³ For a similar point, see Rama Srinivasan, 'Cultural Expertise and Decolonization' in Holden (ed), *Cultural Expertise, Law, and Rights* (n 14).

³⁴ Mary Kavita Dominic, 'Cultural Expertise in South Asia' in Holden (ed), *Cultural Expertise, Law, and Rights* (n 14).

asylum proceedings in Slovakia, Singh and Ramkumar show how cultural expertise not only has power but may become a source of domination. To reduce this risk of domination, both explicit formal and ethical requirements as well as continuous, but procedurally informed, public scrutiny are needed.

All contributions together underscore the decisiveness of the selection of experts, which may, in case of absence of transparency and regulation enacted after thorough multisectoral deliberation, disadvantage the individuals and communities struggling for recognition of their rights. Ultimately, these contributions point to the value that cultural expertise may bring to the exercise of ‘well-tempered power’³⁵, as the heart of the rule of law within and beyond the courtroom. This is achieved by striving to leave no one behind and not only to understand, but also to recognise diversity, with humility.³⁶ Doing so obfuscates straightforward, generalisable conclusions about just solutions, but does not undermine the quest for understanding other members of the global community, and thereby form one’s self.

5 A collaborative enterprise

Some of the contributions in the Special Section (Gulecha, Johansson et al., Tužinská, Ziliotto) were presented, in draft forms, at the hybrid workshop, convened by the guest co-editors at the Jindal Global Law School in December 2022.³⁷ In the following, we provide a brief overview of those that did not transform into fully-fledged manuscripts, not only to recognise the valuable participation of their authors at the workshop, but also to encourage the development of further research on cultural expertise in a cross-jurisdictional and cross-sectoral perspective.

The workshop encompassed discussions on cultural expertise in legislative drafting via the presentation by Mouli Banerjee, challenging the prevailing invocation of the concept in litigation; in highly diverse political contexts, the involvement of cultural experts by legislators and drafting committees may sensitise decision-makers and help avoid the enactment of binding rules based on limited or inaccurate information (with all the caveats of expert selection³⁸ arising here as well). The call for such expert involvement rests on the premise of rational deliberation in the legislative body, which has been questioned in the times of rising illiberalism.³⁹ Legislative

³⁵ Martin Krygier, ‘Tempering Power’ in Maurice Adams, Anne Meuwese and Ernst Hirsch Ballin (eds), *Constitutionalism and the Rule of Law: Bridging Idealism and Realism* (Cambridge University Press 2017).

³⁶ John Keane, *Power and Humility: The Future of Monitory Democracy* (Cambridge University Press 2018).

³⁷ ‘Cultural Expertise and Litigation: Practices in South Asia and Europe [International Workshop]’ (*International Political Science Association*). <https://www.ipsa.org/na/call-for-papers/cultural-expertise-and-litigation-practices-south-asia-and-europe-international>. Accessed 16 December 2023

³⁸ Joseph Sanders, ‘Science, Law and the Expert Witness’ (2009) 72 *Law and Contemporary Problems* 63.

³⁹ For example, Nadia Urbinati, *Me the People, How Populism Transforms Democracy* (Harvard University Press 2019).

drafting and decision making influences the scope and practices of instructing cultural experts in litigation, as the question of the presence of a definition of cultural expertise in the Indian Evidence Act, 1872, highlighted by Malvika Seth and Ashwin Mishra shows.⁴⁰ Seth and Mishra engaged with Section 45 of the Act which allows ‘persons [skilled in] foreign law, science or art’ to testify as experts, in combination with Section 48, which invites persons ‘likely to know’ of existence of a ‘general custom or right’ to testify in relevant cases. This opens a debate on whether cultural expertise qualifies as expertise under Section 45 of the Act, and whether there is a hierarchy between the two provisions. The presenters concluded that there is no strict hierarchy between the invoking of cultural expertise with reference to the two provisions, but there seems to be an *unsaid bias* to testify according to Section 45—an observation in line with the widespread tendency to prefer *objective science* over experience-based testimonies⁴¹ at court.⁴²

As in the Special Section, the workshop further explored past uses of cultural expertise. Soazick Kerneis discussed whether and how the concept may travel not only through space, but also through time, back to the Roman Empire and experts on local laws. While there is no universal discernible historical moment which marks the start of the use of cultural expertise, difficulties arise with the anachronistic uses of the concept, as the commitment to procedural neutrality and the search for truth has not been common in imperial practices, which shaped considerable segments of history.⁴³

Finally, questions of experts’ responsibility surfaced in Sharon Weill’s presentation which built on the author’s previous work pertaining to mass criminal trials and other sources⁴⁴ highlighting the amplifying public conversation that highly mediated trials create.⁴⁵ Focusing on the Bataclan trial in Paris, Weill unpacked the multi-layered narratives of the trial, which raised several dilemmas for the experts’ participation. Such dilemmas also surfaced in Miroslav Mareš’s presentation, based on first-hand familiarity with the evolution of expert witnessing in the Czech Republic after the fall of state socialism in 1989, and in Max Steuer’s recounting of the Slovak *Mazurek* case, in which he acted as expert witness tasked with contextualising the statements made by an extreme right Member of Parliament charged with ‘hate speech’.⁴⁶ Mareš discussed how, in relation to crimes of extremism and terrorism, expert witnesses in Czechia are often instructed by the state institutions (police or prosecution). While

⁴⁰ For some historical insights into the Indian Evidence Act 1872, see Kunal Ambasta, ‘One Hundred (and Fifty) Years of Solitude: The Indian Evidence Act 1872 as a Lost Project of Law Reform’ (2023) *Indian Law Review* 1.

⁴¹ For example, Frederick Schauer, *The Proof: Uses of Evidence in Law, Politics, and Everything Else* (Belknap Press 2022).

⁴² Emphases added.

⁴³ Holden, ‘Anthropologists as Experts’ (n 15).

⁴⁴ Sharon Weill, ‘Engaging with Court Research: The Case of French Terror Trials’ (2023) 13(S1) *Oñati Socio-Legal Series* S225.

⁴⁵ See for example, Anat Peleg and Bryna Bogoch, ‘Mediatization, Legal Logic and the Coverage of Israeli Politicians on Trial’ (2014) 8(3) *Journalism Practice* 311.

⁴⁶ Max Steuer, ‘Democratic (Dis)Armament’ (*Verfassungsblog*, 17 December 2019). <https://verfassungsblog.de/democratic-disarmament/>. Accessed 1 December 2023.

their insights are beneficial for the broader political community, this affinity between the cultural experts (who in Czechia were occasionally directly employed by the ministry of interior) and the state necessitates the scrutiny of their procedural neutrality also through formal legal regulation of expert witnessing. Max Steuer, similarly to Weill, highlighted the mediatisation of the Slovak trial, which in this case was more conducive for far-right electoral support than the reputational harm incurred by the defendants who presented themselves as martyrs defending democracy against overly restrictive conceptions of free speech. Last but not least, an equally multi-layered case was unpacked by Kerstin Carlson,⁴⁷ who highlighted how the absence of cultural experts in trials where racial motives are at play may lead to an oversimplified dichotomy where racial and other motives to engage in criminal conduct are superficially presented as mutually exclusive.

With increasing polarisation worldwide,⁴⁸ cultural (and other forms of) expertise remain essential in democratic constitutional systems to facilitate more informed, holistic decisions which aspire⁴⁹ to shared ideals of justice. The study of expertise requires continued attention in scholarly and broader public discourses.

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⁴⁷ Kerstin Bree Carlson, 'A Murder Trial in Denmark Leaves a Nation Wondering What Constitutes a Hate Crime' (*The Conversation*, 7 December 2020). <https://theconversation.com/a-murder-trial-in-denmark-leaves-a-nation-wondering-what-constitutes-a-hate-crime-151446>. Accessed 8 December 2023.

⁴⁸ See for example, Jennifer McCoy and Murat Somer, 'Political Parties, Elections, and Pernicious Polarization in the Rise of Illiberalism' in András Sajó, Renáta Uitz, and Stephen Holmes (eds), *Routledge Handbook of Illiberalism* (Routledge 2021); Andrew Arato and Jean L Cohen, *Populism and Civil Society: The Challenge to Constitutional Democracy* (Oxford University Press 2021) 93–95; Wojciech Sadurski, *A Pandemic of Populists* (Cambridge University Press 2022) 212–214.

⁴⁹ Lon L Fuller, *The Morality of Law* (Revised Edition, Yale University Press 1977) Ch 2; see also Mark Goodale, 'Afterword: Cultural Expertise Within—and Beyond—the Boundaries of Law' in Holden (ed), *Cultural Expertise, Law, and Rights* (n 14). 'The argument for cultural expertise [...] is an argument for linking cultural diversity to substantive equality, or, rather, for making cultural diversity a necessary precondition for a vision of justice that goes far beyond the terms of "equality before the law".' 341.