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Cultural expertise and legal pluralism in the United Kingdom, France, and Italy

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ABSTRACT

This paper investigates cultural expertise as a theoretical framework guiding the use of social sciences knowledge as expertise to assess evidence in dispute resolution and rights determination in the United Kingdom, France, and Italy. With a focus on legal pluralism, the study examines whether cultural expertise can effectively reconcile multiple sources of law with state laws, thereby mitigating concerns about legal pluralism undermining the authority of state laws. The first part of the paper highlights challenges associated with recognizing multiple legal sources without a comprehensive understanding of cultural expertise, also including the objections raised against accommodating legal pluralism in diverse societies. In the second part, the paper reviews three potential models for cultural expertise: independent cultural experts with established experience and reputation, experts appointed by decision-making or investigative authorities, and a hybrid system combining both types of expertise. The analysis is informed by global legal pluralism, considering social inequalities and power dynamics as crucial factors in understanding the plurality of law. Drawing upon the perspectives of legal pluralists attentive to social inequalities, the paper concludes by exploring the potential of cultural expertise within the framework of new global legal pluralism. It argues that cultural expertise, when effectively applied, can facilitate the identification of ways in which state and non-state laws can address and alleviate inequalities. By bridging the gap between culture and law, cultural expertise holds promise for contributing to a more equitable and inclusive legal system.

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Introduction

This article starts from the shared theoretical assumption of cultural expertise and legal pluralism, which is the recognition of the plurality of legal sources in contemporary legal systems. All the trends of legal pluralism have appreciated the

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coexistence of multiple legal sources, which have been identified with a variety of terms such state law, customary law, religious law, and international law, just to mention some. Cultural expertise is a theoretical framework that seeks to reconcile multiple sources of law and this paper aims to position cultural expertise vis-à-vis legal pluralism through a theoretical overview of the evolution of the key concepts of both legal pluralism and cultural expertise, and a comparative analyses of three formats of cultural expertise in the United Kingdom, France, and Italy.

Both cultural expertise and legal pluralism acknowledge that law is not just a product of the state, but a product of complex cultural, societal, and historical forces. In the first part, this paper overviews the main trends of legal pluralism and evaluates the challenges of the solutions that they have offered, especially for what concerns social inequalities. The paper then moves on to discuss the limitations of the binary opposition between law and culture of the first legal pluralism, and the interest to look at it as a continuum, instead. Global legal pluralism and its challenges are then introduced with a stress on those aspects that are relevant to position cultural expertise vis-à-vis legal pluralism: the need to overcome the binary opposition between state- and non-state law and the danger of co-optation by powerful hubs that are not ready to relinquish their primacy.

In the second section this paper outlines the main definitions of cultural expertise, including a brief discussion of concepts and theories related to culture and law. It positions cultural expertise as a tool to promote more inclusive justice that acknowledges and encourages social diversity. The paper discusses the relationship between Indigenous knowledge and cultural expertise, which are crucial to identify the notion of voice and claim of rights and provides an overview of the antecedents of cultural expertise. The overview of the historical occurrences of cultural expertise before cultural expertise also support a short analysis of the notion of culture and expertise, and their roles in the theoretical framework of cultural expertise.

In the third section, the article introduces the reasons for and the challenges of, comparing United Kingdom, France, and Italy, whose legal systems differ significantly. This third part reviews three potential models for cultural expertise: independent cultural experts with established experience and reputation, experts appointed by decision-making or investigative authorities, and a hybrid system combining both types of expertise. The analysis is informed by the perspectives of the legal pluralism scholarship that considers social inequalities and power dynamics as important factors for assessing the capacity of the legal systems to render justice. The article concludes by considering the potential of cultural expertise within the framework of new global legal pluralism. It suggests that legal pluralism can serve as a platform for identifying ways in which plural normative systems can address and mitigate inequalities and that cultural expertise, as aiming to foster a more inclusive justice, aligns particularly well with those trends of legal pluralisms that strive for the protection of international human rights and inclusion. Finally, the roles of social scientists in the field of dispute resolution and the ascertainment of rights are identified. This article concludes with positioning cultural expertise with those trends of legal pluralism that value social diversity and take measures for fostering

substantial inclusion. Conclusions also engage in considerations on whether cultural expertise can effectively address some of the identified weaknesses of the first trends of legal pluralism, especially for what concerns the risk of undermining international human rights.

Legal pluralism and its challenges: from comparative law to social justice

The emergence of legal pluralism as a field of study can be traced back to the late nineteenth century, a period dominated by social evolutionism. During this time, scholars such as Henry S. Maine (1861) and Lewis H. Morgan (1851), considered as the founding fathers of legal anthropology, approached the relationship between law and culture in distinct ways while engaging with social issues. Maine, a historian and legal comparativist, argued that understanding non-western societies was possible by comparing their legal characteristics to earlier stages of development observed in western societies, with Roman law serving as his paradigm. In contrast, Morgan immersed himself in extensive fieldwork among the Iroquois and actively supported their land disputes, displaying a sense of social responsibility and engagement. This kind of engagement with Indigenous communities by western scholars continued throughout the twentieth century but these advocacy efforts were often divorced from the lived experiences and voices of the minority communities themselves.

Early perspectives on legal pluralism were characterized by a sense of awe at the existence of Indigenous laws in colonized societies. Ehrlich (1936) and Malinowski (1926), in their respective fields all acknowledged the presence of laws that were not imported or imposed by the state or European colonizers. The early stages of legal pluralism were rooted in the belief that legal systems could be compared and understood hierarchically, with western legal systems often serving as the benchmark. This approach, influenced by social evolutionism, assumed a linear progression of societies towards a western model. However, as scholars delved deeper into the study of legal pluralism, they realized that this hierarchical perspective perpetuated social inequalities. A critical perspective gradually emerged, asserting that European laws in colonized contexts were merely superimposed systems designed to serve the interests of industrial societies.

The focus shifted from a narrow comparison of legal systems to a more nuanced exploration of how law operates within various cultural contexts. Scholars began to appreciate the dynamic interaction between law and culture, recognizing that legal systems cannot be evaluated solely through a western lens. Instead, they embraced the need to engage directly with the diversity of legal practices and cultural norms. The demand for cultural accommodation by various communities played a significant role in the development of legal pluralism. Scholars such as Ballard (1994), Menski (2011), Shah (2007), and Shah, Foblets, and Rohe (2014) have argued that European countries should incorporate the laws of non-European minorities. Particularly, the examination of religious sources of law, despite secularism, has highlighted their role in resolving family law disputes within religious minority jurisdictions. However, it soon became evident that the accommodation of diversity did not move from equal footing and was insufficient.

The recognition of plural sources of law, whether within or outside the state, has faced two primary challenges from the outset. Firstly, there is the difficulty for the state to acknowledge a multiplicity of legal systems that can better accommodate the rights of diverse societies. Secondly, there is a concern that non-state laws may perpetuate discrimination and mistreatment against vulnerable groups and various minorities. Within the theoretical framework of legal pluralism, caution has been expressed regarding the unconditional endorsement of jurisdictions that operate within unequal and patriarchal social contexts. Scholars like Parashar (2013) have criticized the supporters of personal laws in India for their lack of social responsibility towards women's rights. Similarly, Bano (2017) has examined women's perspectives on religious tribunals in the United Kingdom and highlighted that while religious law upholds the values of minority groups, they can also perpetuate the vulnerability of minorities within those groups.

Feminist and Marxist scholarships have also expressed scepticism regarding the accommodation of non-Euro-American laws and customs. These perspectives argue that such accommodations pose a risk to the rights of vulnerable segments within minority groups (Okin et al. 1999; Saharso and Prins 2008). Shachar (2001) suggests that multicultural accommodation should incorporate social reform measures to address intercommunity relations and establish new systems of governance that rectify traditional vulnerabilities.

Critiques to legal pluralism underscored the need for a balanced approach that considers the potential risks and inequalities associated with legal systems endorsing inequalities. The very notion of accommodation was considered limited, and some scholars started to realise that to ensure the rights and well-being of people, especially those from marginalized or vulnerable backgrounds, safeguards should be established within these plural legal frameworks. A deeper consideration of rights became necessary.

Achieving social reform goals required legal pluralism to embrace the notion of power and move beyond the rigid dichotomy between state and non-state law. Scholars who adopted a legal pluralism approach increasingly recognized the need to address social inequalities and advocate for social reforms. This evolution in the understanding of legal pluralism led to a crucial realization: accommodation of diversity should not be the endpoint, but rather a means to uphold and protect rights. Merely recognizing and tolerating diverse legal practices and cultural norms is insufficient without ensuring that fundamental rights are respected and upheld within these contexts. Additionally, it was necessary to overcome the inequality which was inherent in the perspective of accommodation as top-down approach. As legal pluralism matured as a field of study, there was a growing consensus that the recognition of rights is paramount. It became clear that the coexistence of different legal systems should be accompanied by a commitment to human rights, justice, and equality. Legal pluralism evolved to encompass not only the acknowledgment of legal diversity but also the promotion of rights-based approaches, ultimately seeking to foster a more inclusive and just legal framework that respects and protects the rights of all individuals, regardless of their cultural backgrounds.

Within the legal pluralism scholarship, some researchers have emphasized the importance of addressing social inequalities by examining power dynamics and advocating for social reforms. In Hindu divorce (Holden 2008) it is explained how customary practices recognized by personal Hindu law can both support women's agency in seeking matrimonial remedies and perpetuate gender inequalities, depending on how claims are negotiated contextually.

Studies have also revealed that certain actors within the professional sphere of state law, such as lawyers, embassies, translators, NGOs, and private offices, provide legal aid and advocate for legal changes to protect the rights of minorities in Europe (Bouillier 2011; Tommaso and Jacoviello 2011). In some cases, members of influential minority communities can access this support and expertise in navigating family and migration law issues, assisting them in negotiating between European laws and legal systems in their countries of origin. However, less influential minorities often lack adequate support in these endeavours (Sportel 2014). Hence, the relationship between plural sources of law appear to benefit from cultural expertise, as knowledge that can assist decision-making authorities in assessing evidence and highlighting the specific conditions necessary for substantial recognition of rights.

While sociolegal scholarship has generally acknowledged the importance of recognising multiple sources of law and accepted the connection between law and culture, it still tends to maintain a dichotomy between black letter law, which is seen as promoting equality, and law in action, which is viewed as fostering diversity but potentially undermining human rights. Scholars such as Benda-Beckmann and Benda-Beckmann (2006) have explored the concept of state-approved legal pluralism, while Foblets and Renteln (2009) have advocated for policy development that supports underrepresented groups within minorities. These efforts may be driven by a response to the growing criticism against legal pluralism. Notably, the Benda-Beckman and Benda-Beckmann (2006) have expanded the concept of legal pluralism to serve as an operational tool, emphasizing its descriptive and analytical power.

However, in the effort to measure the degree of achievement of common goals of inclusion and fight against discrimination, the challenge has also become the identification of reliable data that measure social change. Sociolegal scholarship from a broader perspective than legal pluralism trends, has grappled with the capacity of the law to address global inequalities without engaging with empirical data collection. Criticism has also emerged regarding the ideology of global commensurability, which relies on numerical representations to reveal the world. Urueña (2015) questions the reliability of indicators of the rule of law, highlighting their susceptibility to political manipulation due to their simplicity and neutrality. The selective mobilization and interpretation of these indicators serve the interests of various actors. Sally Engle, Davis, and Kingsbury (2015) have explored the overvaluation of indicators in international law, highlighting the conundrum that the act of measurement itself often creates the perception of a phenomenon's existence. This quantitative perspective tends to emphasize measurable social phenomena, potentially undermining the link between law and culture. It implies that the relationship between law and culture might be considered useless or non-existent because of difficult measurement.

Global legal pluralism as a theoretical approach that examines the interactions among multiple different legal and quasi-legal regimes regulating social life at the global, international, and transnational levels (Berman 2020), appears to overcome the impasse of both the opposition between state- and non-state law and the measurability of social change. Global legal pluralism acknowledges the coexistence of diverse legal systems and communities, including those that are built and maintained by non-state actors such as international courts, arbitral bodies, and regulatory organizations. Global legal pluralism recognizes that different communities may have different lived experiences and understandings of justice, and attempts to develop frameworks, mechanisms, and institutions that can facilitate harmonious and productive interaction among diverse communities and legal systems. Crucial to the understanding of global legal pluralism is accepting that the state is no longer the primary factor determining law and rights. Instead, the focus is on the multiple connections that people hold with various communities and social groups. Global legal pluralism was initially met with enthusiasm but was eventually rejected in France because of the association of some French proponents of the theory with colonialism. In fact, the French global legal pluralism did not challenge the primacy of the French state, whose aim was at best to integrate subjects from overseas territories, whilst these efforts did not prove convincing in their intent (Mallard 2020). The French experience with global legal pluralism shows the delicate balance between innovative theoretical approaches and dynamics of power and politics, which can inform the applications of ideas to perpetuate the status quo.

Eventually, the conundrum concerning access to reliable data for measuring social change, and the difficulty of the state to forego their primacy takes us to another impasse that exceeds the highly specialised domain of law. There is, however, a complementary perspective that could offer a way out in the adoption of cultural expertise as theoretical framework that can help decision-makers to identify the information that is helpful to assess data that constitute evidence in the legal process and thus recognising plural normative orders. Cultural expertise acknowledges the plurality of legal sources and the close relationship between law and culture. In the landscape of the global rule of law, where measurable phenomena are prioritized, there is an interest in overcoming the binary opposition between state law and non-state law that emerged in the early days of legal pluralism, especially because this opposition conceals too often a hierarchy among different legal systems and social groups. This perspective suggests that what has been identified, in the past, as law and non-state law, often functions as a continuum and contributes to the implementation of government policies, a concept formulated by Foucault, Senellart, and Burchell (2008) as "governamentality". The conceptualization of interlegalities by Teubner (1983), Cover (2017), and Santos (2002) as an interpenetration of different normative orders provides a valuable framework for understanding the relationship among the plurality of the sources of law. The challenge, as illustrated by the French interpretation of global legal pluralism, lies in the actual process of intercommunication among various normative systems, where the state is unwilling to relinquish its primacy. The potential of the theory of cultural expertise, is to act as bridge to assess the prospective contribution of the information concerning plural normative orders, and its contribution to the recognition of international human

rights. The following section explores the conditions for this potential at a theoretical level.

The definitions of cultural expertise

Since at least the nineteenth century various instruments have developed that deploy cultural knowledge in the field of dispute resolution and the ascertainment of rights. Social scientists have involved with activities that for a long time have been perceived as episodical and fragmented, until the theoretical framework of cultural expertise offered a systematic approach. Cultural expertise as a concept was elaborated in 2011 to address the lack of a theoretical framework that could account for various types of engagements of social scientists with law (Holden 2011). At that time, in the United Kingdom, almost every social scientist had been approached by a law firm to act as an expert witness. Whilst in the early 2000s social scientists were appointed as experts, mainly in migration law, with the passage of time, their expertise was sought in a remarkable variety of legal fields. For example: Is a transnational marriage, divorce, or adoption considered valid without any official documentation or attestation? Is fasting to death or helping someone to fast to death a religious ritual, a personal choice, or a crime? Is returning an individual to a country affected by climate change against human rights? When a certain piece of art, or a certain language is a legal offense? Who are the owners of museum artefacts? Different branches of law in combination with the appointment of specialised experts have developed a consolidated practice to address these questions which often require the understanding of several normative systems and updated first-hand information. Cultural experts provide reliable socio-legal data analysis for the assessment of evidence in decision-making. To continue with the example of the returnee to a place affected by climate change, a cultural expert will be able to provide updated information on the severity of the impact of climate change in a specific geographic area and social group; provide information on the likely risk to which the returnee would be exposed on return; and also submit data on the capacity and willingness of the country to protect the people affected by climate change.

Whilst the practice of appointing expert witnesses across several disciplines of the social sciences has consolidated over time, the only theory that proposes a comprehensive treatment of this phenomenon in the social sciences, is the one of cultural expertise. The antecedents of cultural expertise are, in fact, a diverse ensemble of practices and instruments that could be listed as "cultural expertise before cultural expertise" and range from advisory roles in policy making to expert witnessing in cases involving Indigenous peoples and members of diasporic communities in connection with migration, but also include the engagement of anthropologists for the interdependence and indivisibility of civil, political, economic, social, and cultural rights.

Two main definitions were developed to encompass the engagement of social scientists with law, their requisites and limitations, ethical commitment, and deontological positioning: cultural expertise as a general definition, and Indigenous expertise, as the expertise of the Indigenous people and First Nations.

As a general definition cultural expertise is the special knowledge (special in relation to the context of the decision-maker) deployed by the experts of laws and cultures for assisting decision-making authorities in the assessment of evidence with information on the socio-legal backgrounds of facts and persons involved. Cultural experts must be independent and afford a position of critical affirmation according to a primary role to the voice of the beneficiaries of cultural expertise (Holden 2023; Holden 2022).

Indigenous expertise is the special knowledge and experience of Indigenous peoples which locates and describes relevant facts considering their particular history, background, and context, and facilitates the explanation of Indigenous concepts to a non-Indigenous audience (Higgins 2023). Both definitions of cultural expertise affirm the primacy of the voices of the beneficiaries of cultural expertise. The main difference between the two is in the role of the voice of cultural expertise: whereas in the general concept of cultural expertise the primacy of the voice of the beneficiaries can be mediated by the state as it happens for all citizens; in the case of Indigenous expertise the stress is put on the Indigenous voices as expression of self-determination. This connects directly with the type of evidence that can be incorporated into the international legal framework, in matters concerning Indigenous people, and supports the principles of self-government and free, prior, and informed consent. The right to self-government was reaffirmed by the 2007 Declaration on the Rights of Indigenous Peoples (UNDRIP) which also includes the right to self-determination and the principle of free, prior, and informed consent. The right to self-determination is a well-established principle of international law and holds that peoples have the right to have their say in their own destiny by determining their social, economic, cultural, and political systems. The right of consent holds that Indigenous peoples should be informed of, consulted with, and give their consent to all initiatives which impact on their lives.

The choice of the term "cultural expertise" in defining this concept is significant in three ways. The term "cultural" reflects the fact that social actors often use this word to describe non-legal aspects that influence legal processes. By incorporating "cultural," the definition acknowledges the broad spectrum of social, economic, and interpersonal factors that can impact legal outcomes. The term "expertise" underscores the specialized knowledge that social scientists bring to legal contexts, particularly when appointed as expert witnesses. This expertise is crucial in dispute resolution and social problem solving, as it provides the court with nuanced insights that transcend technical legal considerations but are often required by the law, as recent and updated information on the facts of the case. Thus, "cultural expertise" makes visible the critical engagement of social scientists with law, highlighting their contribution to the legal field by addressing complex social issues for which the law requires social sciences data and analysis.

The concept of cultural expertise intersects with the legal culture approach, which emphasizes how social groups interpret and expect the law to be (Friedman and Scheiber 1996; Varga 2012, among others). While the legal culture approach offers interpretations of law, cultural expertise connects social sciences data and analysis with legal requirements in specific fields of law, aiding decision-makers in the process of evidence assessment. Despite some overlap with legal pluralism and the legal

cultures approach in the identification of culture as providing interpretations of human practices, cultural expertise uniquely emphasizes the bridge between social sciences and law with the cultural expert appointment. Historically, cultural expertise has been overshadowed by compartmentalised views of social sciences expertise, making it less visible until recently, and such also less accountable.

The advantages of an encompassing definition of cultural expertise are visibility, inclusion, support, and accountability. Cultural expertise offers visibility to the variety of instruments that already use social sciences knowledge in the legal practice, but also offers the support of theoretical and ethical guidelines. The overarching concept of cultural expertise aims to provide a robust framework for ethical principles, with a primary focus on the "do no harm" principle, which is fundamental to social scientists' work. Moreover, it emphasizes the need to prioritize the voices and rights of the groups affected by cultural expertise. As a result, cultural experts must maintain independence in their work. This independence translates into avoiding any affiliations that could compromise their impartiality, such as with government bodies, armies, prosecuting agencies, the police, and the judiciary. By adhering to these ethical guidelines and upholding independence, cultural experts can ensure a more meaningful and beneficial impact on legal practices.

If adequately provided, cultural expertise contributes to the fight against discrimination through a substantial acknowledgement of cultural diversity in the justice systems. Cultural expertise as umbrella concept has the potential to overcome the lack of cohesion among social scientists acting as experts by providing a theoretical platform for professional support, dialogue, and mentorship. Cultural expertise as a theoretical framework including enhanced ethics promotes the accountability and quality of service vis-à-vis social minorities and Indigenous people by stressing the primacy of the voices of the beneficiaries of cultural expertise.

Three potential models for cultural expertise

Since the definition of cultural expertise has the aim to provide a theoretical and ethical framework to a diverse set of instruments that have been in use in the field of litigation for several centuries already, the landscape is extremely varied in practice. The use and frequency of cultural expertise in courtrooms and in out-of-court settings varies across different countries, legal systems, and fields of law. The third section of this paper explores the modalities of its occurrence in the United Kingdom, France, and Italy. Although cultural expertise extends to both in-court and out-of-court processes, covering an impressive variety of out-of-court processes ranging from alternative dispute resolution to international commercial arbitration and including courts of religious laws and a variety of normative systems, this paper will only be concerned with in-court expertise in the United Kingdom, France, and Italy. These three countries were chosen not for their similarity, but rather to represent the variety of legal systems in Europe, and explore whether cultural expertise depends on the legal system or, if there are components that are common across different legal systems.

In the United Kingdom, experts are frequently appointed in immigration courts, where their contribution has been acknowledged as valuable. In France, cultural

expertise encompasses various approaches, including the use of experts appointed by the executive in the Cour Nationale du Droit d'Asile, cultural intermediation and ethnopsychological assessments, and the use of ad hoc cultural experts in terrorism cases. In Italy, the court can appoint experts either on its own motion or upon request by the parties. While formal appointments of cultural experts are not common, cultural mediators often play roles exceeding their basic mediation competence. Comparing cultural expertise in the United Kingdom, France, and Italy is challenging due to their distinct legal systems: common law in the UK, civil law in France, and a mixed legal system in Italy. Each system has different principles, procedures, and expectations for expert witness contributions. However, this comparison can reveal the connections between expert appointment practices and the plurality of legal sources, in different legal systems. It also provides insights into whether the training of cultural experts should be limited by discipline and geography, or indeed can be interdisciplinary and global, despite its anchorage with specific socio-legal contexts.

United Kingdom

In the United Kingdom, the appointment of experts has most frequently been recorded in immigration courts, where the contribution of independent experts has been affirmed as almost always useful (see UK convention for case law), family law and criminal law. Experts usually submit a written report and, depending on the jurisdiction and the case, experts can also be cross-examined.

Cultural experts are often instructed in immigration and asylum cases to provide insights into the cultural, social, and political conditions of the country of origin of the applicants. Cultural experts may assess the credibility of an asylum seeker's claims, analyse the prevailing conditions in the country, provide an understanding of cultural practices, customs, and norms, evaluate the risk of return to the country of origin of the applicants, and the feasibility of internal relocation.

Cultural experts may be instructed in family law cases, especially in matters involving international or cross-cultural marriages, custody disputes, or cases with cultural or religious considerations. They can provide expertise on norms, values, and practices relevant to the case.

In criminal law cases, cultural experts may be instructed to shed light on cultural factors that could influence the behaviour, motivations, or intent of the accused. They can provide insights into cultural practices, beliefs, or societal influences that may be relevant to the case, helping the court assess the evidence and understand the accused's background.

Cultural experts may be involved in human rights cases, where their expertise can contribute to understanding the cultural, social, and political dynamics of a particular country or region. They can assist in assessing potential human rights violations, analysing cultural barriers, helping the court to ascertain the belonging of the applicants to certain persecuted or discriminated social groups, or evaluating the impact of cultural practices on individuals' rights.

Cultural experts may be instructed in cases involving education or social services, particularly those related to cultural diversity, discrimination, or the integration of

individuals from different cultural backgrounds. They can provide insights into cultural norms, educational systems, or social dynamics that may impact the well-being or rights of individuals involved.

Cultural experts may be involved in cases related to international development, policy-making, or cross-cultural initiatives. Their expertise can inform decisions regarding aid programs, policy formulation, or development strategies by considering the cultural context and local perspectives.

While cultural experts primarily provide insights into the cultural, social, and political aspects of a particular country or region, their expertise can also extend to understanding foreign legal systems and their cultural context.

In cases where legal matters involve interactions with foreign jurisdictions, cultural experts may be instructed to provide an understanding of the foreign legal framework, legal processes, and cultural norms that influence the interpretation and application of the law. This can be particularly relevant in cross-border disputes, international business transactions, or cases with an international dimension.

Cultural experts can assist the court or legal professionals in navigating contextual information, cultural interpretations of legal principles, and insights into how cultural factors may influence legal practices and the actual implementation of laws. Their knowledge can help bridge the gap between legal systems and enhance the understanding of the cultural nuances that may impact legal proceedings or decisions.

To the difference of the United States where cultural expertise is often interpreted in the sense of cultural defence, cultural experts are generally advised to avoid meeting lawyers' clients unless it is deemed necessary for the specific circumstances of the case. There are several reasons behind this recommendation.

Cultural experts are expected to maintain impartiality and objectivity in their assessment and analysis. By avoiding direct contact with the lawyers' clients, they can minimize the risk of developing personal biases or attachments that could potentially compromise their professional judgment. Keeping a certain distance helps them maintain an independent perspective and focus on providing an unbiased cultural analysis.

Lawyers' clients often share sensitive and confidential information during the legal process. By refraining from direct interaction with the clients, cultural experts can avoid potential breaches of confidentiality. This ensures that the clients' personal information and details remain protected and only shared within the appropriate legal framework.

The legal system relies on established procedures and rules to ensure fairness and due process. By limiting direct communication between cultural experts and lawyers' clients, the integrity of the legal process is preserved. The experts' analysis and opinions are based on the information and evidence presented either in court or in writing to the court, rather than subjective impressions gained through direct interactions with the clients.

In some cases, cultural experts may be called upon to provide their expertise in situations where there are conflicting parties or interests. By avoiding direct contact with the lawyers' clients, cultural experts can prevent potential conflicts of interest and maintain their professional integrity. Their focus remains on providing objective

analysis and opinions that serve the interests of justice and the legal proceedings at hand.

Cultural experts have a specific role within the legal system, which is to provide their expertise on cultural matters. Their involvement in the case is primarily through their reports, testimonies, or expert opinions. By avoiding direct contact with the lawyers' clients, cultural experts can maintain clear professional boundaries and ensure that their role remains within the defined scope of their expertise.

In the United Kingdom, opinions on the use and effectiveness of cultural experts are varied. On one hand, the legal system allows for flexibility as parties have the option to provide expert reports when they deem it necessary, subject to court permission. On the other hand, some experts and lawyers believe that cultural expertise may not hold the same weight as quantitative evidence from other sources and may be disregarded as merely "anecdotal". Expert reports that combine qualitative and quantitative data tend to receive a more favourable reception. Scholarships generally suggest that a greater awareness of cultural expertise as a valuable tool in court proceedings would lead to more frequent utilization of cultural experts.

The United Kingdom format of cultural expertise expands on a great variety of fields of law and shows a keenness to include the sources of foreign law including also practices of law that may exceed state law, especially for what concerns international protection, human rights violation, immigration and the protection of vulnerable groups. The avoidance of direct contact between cultural experts and lawyers' clients is intended to uphold the principles of objectivity, confidentiality, integrity, and professionalism within the legal process. It helps ensure that the cultural expertise provided by the experts is based on objective evidence and relevant information presented through established legal channels. In the United Kingdom, cultural expertise is grounded in the principles of independence and neutrality. This approach leverages the adaptable nature of the common law legal system, which relies on precedents but also allows re-interpretation. Cultural expertise within this framework plays a vital role in incorporating non-state sources of law, whose acceptance and recognition by the court determine their legitimacy. These sources encompass not only foreign law but also diverse legal practices, thereby establishing a court-based legal pluralism which has the potential to incorporate the vision of global legal pluralism, in principle. In practice, this is strongly counter balanced by the anti-migration policies of the UK, which are actively implemented by the Home Office and a significant section of the judiciary, resulting into the increasing difficulty for cultural expertise to make a sizable impact.

France

In France, there are at least three approaches that fall under the umbrella concept of cultural expertise: the use of by the Cour Nationale du Droit d'Asile (CNDA) of experts appointed by the executive; cultural intermediation and ethnopsychological assessments; and use of ad hoc cultural experts at the Office of the Public Prosecution for terrorism cases.

In the French legal system, the Code of Civil Procedure allows for the instruction of an expert at the request of either the parties or the judge. While the Court of

Cassation and the Courts of Appeal provide lists of available experts to assist judges, the judge has the authority to appoint any person they deem suitable to provide an expert opinion. In criminal proceedings, the court may appoint an expert either on its own initiative, upon the application of the public prosecutor, or at the request of the parties involved. The appointed experts perform their duties under the supervision of the investigating judge or another designated judge.

Experts are typically selected from court lists. Only in exceptional circumstances and through a reasoned decision, the court may appoint an expert who is not listed with the Court of Cassation or the Courts of Appeal. Decrees on Judicial Experts outline the procedures for expert lists in civil and criminal matters, including specific requirements for individuals or legal entities to be registered. To be included on the national list, an expert must demonstrate previous registration on a Court of Appeal list for at least five years or possess recognized skills acquired through at least five years of activity in a European Union Member State other than France. Additionally, experts must exhibit knowledge of the fundamental principles of procedural law.

International protection at the CNDA in France is the result of a process that started with the protection of refugees after World War II and then became progressively streamlined within the court itself during several revisions of its procedure. The greatest source of information for the judges of the CNDA is the Country-of-Origin Information and the assessment provided by the French Office for the Protection of Refugees and Stateless (OFPRA), as well as reports by NGOs and international organisations. However, in some cases, *ad hoc* research is conducted, and in-house reports are produced. CNDA decisions are usually unpublished but include detailed comments on the assessment of vulnerability and sometimes also mention the experts.

Immigration lawyers in France lament that independent experts are almost never appointed for asylum proceedings. Many lawyers attempt themselves to acquire the required knowledge on the socio-legal background of their clients. However, the role of immigration lawyers is affected by a lack of funds and the impact of restrictive immigration policies on the institutional authority of the CNDA, whose judges are often temporarily appointed and do not have enough experience in the field of immigration and asylum (Gill and Good 2019).

Since the 1980s, the anthropology of law department at Paris 1, led by Professor Etienne Le Roy, has experimented with the use of ethnopsychiatry and ethnopsychology to assist family and criminal courts in cases involving parties or defendants with diverse cultural backgrounds. This approach could be read as a continuation of the anti-colonial approaches of the 1940s – 1960s developed within the practices of medicine and psychiatry when Fanon (1965) confronted with the psychological illnesses of both the tortures and the victims of tortures in the Franco-Algerian conflict, and Mars (1951) grappled with the inadequacy of the French health system in Haiti which confused mental illnesses and possession. It is unclear whether and to what extent the early anti-colonialism has indeed inspired the ethnopsychiatry and the instruments of intercultural mediation in the 1980s in France and later in Italy, but certainly the echoes of Fanon's approach is identifiable in some of the 1980-1990 intercultural approaches of Le Roy's

school. In the 1990s, a specific type of intercultural mediation, developed from the intersectoral collaboration of juvenile court judges such as Martine de Maximy and Thierry Baranger with the ethnopsychiatrist Tobie Nathan, under the aegis of the academic framework of the Laboratoire d'Anthropologie Juridique (LAJP), headed by Etienne Le Roy at Panthéon Sorbonne university (De Maximy 2022). Intercultural mediation was then conceived as a process whereby the children and, whenever possible, their parents might play an active role with the help of the intercultural mediator, who not only had training as a mediator but also shared a similar cultural background and, ideally, spoke their native language. The pool of intercultural mediators was provided mainly by the doctoral students at the LAJP. Intercultural mediation took place over several sessions during which the children were made more aware of their own cultural background and personal history and of milestones and turning points in their family lives, such as the role that their family members had in their countries of origin. The aim of these sessions was to help the judge to understand the cultural background of the children and their families as well as help them to position themselves regarding the set of rights and obligations of French society. Intercultural mediators identified themselves as different from mediators for their position of neutrality vis-à-vis the parties and the court. De Maximy, who from juvenile courts pursued her career up to the Presidency of the Assize Court, introduced the appointment of ethnopsychologists at various stages of the criminal proceedings, including appeal hearings. However, with intercultural mediation has never become a systematic instrument, probably in connection with the post-trial significant investment in terms of cost and time.

Since the 2015 terrorism attacks in Paris, historians, anthropologists, and geopolitical scientists have been appointed at the prosecutor's office to produce expert reports that are communicated to prosecutors and judges on their instructions. These experts work within the prosecutor's office, have access to the entire case file, take an oath of professional secrecy, and produce independent analyses that are shared with the prosecutors and, upon request, the judges. Occasionally, these analyses are added to the proceedings and communicated to all parties involved. Cultural expertise in terrorism cases aims to provide a nuanced understanding of the socio-cultural and religious backgrounds of defendants, contributing to a better evaluation of the facts during the investigation. This type of expert appointment raises questions regarding the independence of these experts, their capacity to abide by the "do no harm" principle and the fulfilment of their ethical duties of support and protection of the involved social groups. The appointed experts in France argue that their appointment, despite being closely related with the public prosecutor's office, provides for the necessary independence of the expert's role, and allows for adequate identification and treatment of the matters that relate to culture in terrorism investigation. According to these experts, their appointment in terrorism investigations does provide the investigative judges with a more nuanced knowledge of the context and prevents an essentialised approach to culture (Plainex 2023).

In Europe, France has stood out for its unique approach to integrating various types of cultural expertise into the training curriculum for judges. Recently, in 2023, a significant milestone was achieved with the launch of the first university degree

in cultural expertise at Paris Nanterre. This development has sparked renewed interest among legal professionals, including the judiciary, in exploring the rich historical experience of anti-colonial trends and ethnopsychology within the French context.

Despite the widespread interest in cultural expertise, there are certain challenges that need to be addressed. One such obstacle is the timely identification of experts during legal proceedings, as well as triggering existing procedures for the appropriate remuneration of their services. This hinders the consistent use of cultural expertise through the appointment of independent experts.

Moreover, whilst there is considerable curiosity surrounding the potential inclusion of existing instruments such as intercultural mediation, and the use of experts at the CNDA within the conceptual framework of cultural expertise, it remains unclear whether there is a genuine willingness to adopt the strengthened ethics that cultural expertise demands – a focus on serving social diversity and the most vulnerable segments of society. This lack of clarity is especially evident in the ongoing debates about social diversity in France, which directly impact the limited potential for global legal pluralism within the French legal system. Currently, the dominant perspective on social diversity in the administration of justice remains state-centred and hesitant to fully embrace diversity as an added value. Despite France's long-standing tradition of welcoming freedom fighters and offering international protection, cultural expertise seems to be perceived primarily as a means of bridging and explaining cultural differences, rather than actively recognizing, and promoting diversity.

Italy

In Italy, the court can appoint experts, either of its own motion (Consulente Tecnico d'Ufficio, CTU), or upon request by the parties (Consulente Tecnico di Parte, CTP). In civil proceedings, the experts appointed by the parties are chosen, preferentially, from the Albo dei Periti, a register which is divided into categories for specific professionals and technical skills. While procedural rules provide for the appointment of experts in Italy, formal appointments are not commonplace and even if cultural experts are increasingly appointed, their role often remains unofficial and unrecorded in the court proceedings, leaving little or no trace of their involvement and impact. Cultural mediators – usually native language speakers – are more frequent and often their role is confused with the one of cultural experts, also because cultural mediators are frequently expected to play a role which exceeds their competence in basic mediation. Additionally, voluntary and charity organisations that provide *pro bono* assistance to migrants often act as informal experts, and their reports are included in applications for international protection. Among the voluntary initiatives, the Centro Franz Fanon in Turin stands out as a pioneer in utilizing ethnopsychological expertise to support Italy's migrant population. However, numerous other centres aiding migrants and asylum seekers have also emerged throughout Italy. These centres frequently employ intercultural mediation techniques, drawing inspiration from the principles of French anti-colonial scholar Franz Fanon. By adapting and modernizing Fanon's scholarship, they maintain his vision thereby also potentially fitting within the broader framework of cultural

expertise. The biggest obstacle to the appointment of cultural experts by the parties in Italy is that while free legal assistance is provided by law under certain circumstances, expert evidence, which is categorised as technical assistance, is only reluctantly covered by legal aid. The institutional hesitation to remunerate cultural expertise in Italy is partially balanced by a flourishing civil society initiative. Centres for migrants usually provide some linguistic support and, if they have the capacity, also assist the migrants with the preparation of the application for the permit to stay and international protection.

Research officers from the European Asylum Support Office (EASO) have played a significant role in the implementation of immigration and international protection law in Italy. EASO research officers have assisted legal professionals with the information and knowledge which is usually provided by country experts in other jurisdictions, especially the UK, but they are not usually appointed as experts in proceedings and their mandate is time sensitive. Various legislative initiatives as well as the engagement of specific tribunal such as the tribunal of Pisa, have fostered the professionalisation of cultural experts, but the selection criteria so far stress the linguistic competence and the legal background of applicants and not their training as social scientists.

The appointment of experts at the Territorial Commission and Appeal Courts, which decides immigration and asylum cases in Italy, is informal and uneven, depending on the availability of experts as well as the awareness and the social commitment of the courts and the legal representatives of the applicants. As an UK trained expert and principal investigator of EURO-EXPERT I have been occasionally requested to advise and mentor experts who often provide *pro bono* expertise. This transfer of skills and experience contributed to the highly diversified style of expertise in Italy. Experts are usually free to focus on the issues that they deem relevant for the court, without explicit constraints concerning the format and the admissibility of evidence.

Experts are appointed also in fields of law which pertain to liability for damage and various fields of criminal law. A landmark case on the appointment and role of experts is the *L'Aquila Earthquake* trial, in which Antonello Ciccozzi, an anthropologist who originates from the area where the 2009 earthquake occurred, was appointed as expert. Ciccozzi argued that earthquake scientists predicting a sequence of minor earthquakes led the local people to mistrust their instincts and stay at home, with fatal consequences. Although the final judgement did not give much weight to Ciccozzi's expertise, it included a statement on the value and assessment of expertise as evidence in court, finding that experts are responsible regarding the accuracy of their statements (Ciccozzi and Decarli 2019).

Drawing inspiration from a Canadian model, a cultural test for judges was developed in Italy to determine the necessity of cultural expertise. However, its actual utility remains a subject of extensive debate (Ruggiu 2019). Despite the prevalent lack of awareness among legal professionals and potential beneficiaries of cultural expertise regarding the option to seek expert guidance, immigration lawyers and judges exhibit a commendable social commitment to acquiring socio-anthropological knowledge relevant to their cases (Civinini 2022). While some anthropologists in Italy have shown reluctance to engage with legal matters (Colajanni

2014), grassroots initiatives have encouraged their participation, leading to a wide variety of styles and approaches in the realm of cultural expertise. The informal nature of cultural expertise in Italy has allowed cultural expert to experiment extensively (Ciccozzi and Decarli 2019). Appreciation of cultural expertise in Italy is promoted by a significant segment of the legal profession that values social diversity and actively opposes the rise of right-wing ideologies. This remains an uneven fight, which is nonetheless worth fighting for a global legal pluralism based on the recognition of rights.

Conclusion

This paper offers in the first part, a synthetic overview of the main challenge to the perspective of legal pluralism. Initially, legal pluralism viewed non-western legal systems with awe but tended to compare them hierarchically with western models, eventually perpetuating social inequalities. Over time, a critical perspective emerged, acknowledging the dynamic interaction between law and culture and the need to engage directly with diverse normative systems. The demand for cultural accommodation by various communities played a significant role in the development of legal pluralism. Scholars argued that European countries should incorporate the laws of non-European minorities, particularly regarding religious sources of law in family law disputes. Yet, challenges arose concerning the recognition of plural sources of law, also including the realisation that accommodation would likely perpetuate the hierarchy between majority groups and vulnerable groups and minorities. Feminist and Marxist perspectives expressed scepticism about accommodating non-Euro-American laws and customs, emphasizing the importance of social reform to address vulnerabilities. The same scholars called for a responsible approach that considers the risk of recognising normative systems that endorse social inequalities. Legal pluralism evolved into several trends and the new global legal pluralism started to prioritize the recognition of rights alongside the acknowledgment of legal diversity. Global legal pluralism aims to foster a more inclusive and just legal framework that not only protect but recognizes the rights of all individuals based on the recognition of plural normative orders based on the ties that all people hold with several social groups. However, accessing reliable data on what should constitute plural sources of law and their contents remains a challenge for measuring social justice, and some scholars have questioned the overreliance on numerical indicators to represent complex social phenomena. Additionally, in France where the state was not ready to share its power, global legal pluralism was coopted by colonialism. Cultural expertise has emerged as an umbrella concept to all those instruments that have been used in the legal practices to assist the court in the assessment of evidence whenever the circumstances exceed the knowledge and ordinary experience of the judges. This approach recognizes the continuum between plural source of law and their mutual influence in the reception and implementation of the law converge with the global legal pluralism, for highlighting the need not only to recognize diversity but also to combat social inequalities.

This paper also provides an overview of how cultural expertise is received in the legal systems of the UK, France, and Italy. It highlights the diverse treatment

of the sources of law in these three countries and the potential for global legal pluralism to bridge the gap among diverse normative systems while acknowledging the importance of incorporating critical analysis in support of minorities and social diversity.

The UK appears to be the most receptive to the theoretical framework of cultural expertise, where cultural experts assist judges in evaluating evidence which identifies plural sources of law. The role of experts in the UK is well-established, though specialized scholarship highlights the limited recognition of anthropologists in court. In comparison with neighbouring countries, the UK stands out for systematically appointing country experts, who are often social scientists in cases that require expert knowledge, and the procedure of expert appointment is compatible with the strengthened ethics of the cultural expertise. Hence, cultural expertise in the UK does offer an opening to the consideration of plural sources of law. This opening is, however, heavily counterbalanced by the anti-migration laws and a largely conservative judiciary that makes limited space for diversity and the recognition of rights for social minorities.

France exhibits contrasting approaches. Despite its traditional emphasis on a state-centric legal framework, it also has an anti-colonial academic legacy, resulting in the emergence of distinct practices of cultural expertise. These practices, however, have not fully upheld the ethical principles of cultural expertise or the anti-colonial ideals which inspired them. The tradition of ethnopsychology, initially inspired by anti-colonial criticisms, appears to have either succumbed to assimilation pressures or lost its prominence entirely. The recent appointment of cultural experts within the office of the public prosecutor raises concerns about their independence, particularly when juxtaposed with the frequent reaffirmation of the state-centric nature of the French judiciary. This situation risks isolating cultural expertise from its fundamental mission of a more inclusive justice by assisting decision-makers to identify the conditions for upholding international human rights and combating social inequalities. Nonetheless, a glimmer of hope emerges with the recent introduction of a new degree in cultural expertise at Paris Nanterre. This development indicates both a demand for professionals that are in the position to foster a more inclusive justice, and a potential shift away from the perpetuation of a state-centric perspective that disregards significant inequalities. The challenge is now to train these professionals and equip them with the strengthened ethics of cultural expertise.

Italy has adopted a mixed system for what concerns the practices and instruments that fall under the umbrella concept of cultural expertise. Almost oblivious of political positioning and prevalent trends of thoughts, Italy integrates and reinterprets elements from both the British and French traditions, while also infusing them with a greater level of informality and intermingling between the two. In Italy, cultural mediators are increasingly preferred over cultural experts, and their roles are often viewed as interchangeable, which can result in procedural errors and reduced accountability. Facilitated by the higher degree of informality which features in the Italian legal practices in comparison with neighbouring countries, Italy has embraced experimentation in the management of migration. Various expert figures, often supported by civil society, have contributed to counter the government's strong

anti-migration policies. Cultural expertise in Italy has been most often interpreted in favour of social diversity and supporting minorities, with the younger generations of anthropologists finally overcoming the institutional hesitation toward engaged anthropology in the country. Through cultural expertise, the plurality of sources of law theorized by global legal pluralism may support the fight against the return of right-wing ideologies in Italy, and a significant segment of the legal professions, also including judges, is striving for more inclusive justice.

In summary, the reception of cultural expertise in the UK, France, and Italy highlights the ways in which the three countries deal with the plurality of the sources of law and demonstrates the potential for a reading of these legal systems from the perspective of global legal pluralism as recognition of plural normative orders and fight against inequalities. The UK and Italy, for different reasons, seem to overcome the opposition between state and non-state law, which has often concealed hierarchies among legal systems. By incorporating plural sources of law through various practices that fall under the umbrella concept of cultural expertise, cultural expertise and global legal pluralism converge on establishing a common goal. On the other hand, France maintains a state-centric approach, persistently attempting to reinterpret critical perspectives by providing standardized interpretations of the same issues and attempting to co-opt the instruments of cultural expertise that exhibit a component of criticism. However, there is hope that by embracing cultural expertise more fully and ethically, through new higher education programmes, the new generations of social scientists in France will foster a more inclusive and diverse legal system that truly reflects the complexities and realities of its society.

In all three countries, the UK, France, and Italy, diverse interpretations of cultural expertise feature significant variations in the ways the sources of law are identified and treated. This diversity presents opportunity for a critical analysis that identifies the potential of global legal pluralism. Notably, the UK system appears to inherently respect the independence of cultural experts, at least on paper. Conversely, there is a discernible risk in France, where cultural expertise faces the possibility of being hollowed out by its ethical foundations. On the other hand, Italy demonstrates the advantages of informality, as it harnesses the potential to discover solutions through everyday practice.

Cultural expertise's potential in this landscape lies in its pivotal role for identifying and combating the perpetuation of structural inequalities, thereby valuing plural legal configurations within and across normative systems. For this potential to be realised, a robust ethical framework must accompany cultural expertise. This framework acts as an alert mechanism, preventing cultural expertise from being co-opted or at least alerting on the attempts of co-optation into power structures that perpetuate discrimination. By adhering to a strengthened ethical foundation, cultural expertise can serve as a vigilant watchdog, scrutinising institutions' investments in perspectives that might be presented as tools for inclusion but conceal, instead, instances which perpetuate inequalities. In this manner, cultural expertise assumes a critical role in fostering a more inclusive society, where discrimination is actively countered and marginalized voices are listened to. On these conditions, cultural expertise could serve as a valid theoretical and empirical complement to the approaches of global legal pluralism.

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