Commentary

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Forensic and Expert Social Anthropology: A Short Comment

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Abstract: As the issue of accreditation of anthropologists who work in forensic science and/or who provide expert evidence in legal proceedings is of increasing importance, Rose (2022) provides an interesting perspective on the role of social anthropology within the legal system. This piece provides a short comment on Rose’s publication.

Keywords: Anthropology; social; forensic; expert; evidence.

There is a long history of social anthropologists providing expert evidence in legal proceedings for opinions ranging from claims for asylum (Good, 2007), state of consciousness for criminal trials (Fontein, 2014) (national and international – Wilson, 2016) and indigenous claims for rights and title (Banks, 2009; Morphy, 2006). In his article entitled “Forensic and Expert Social Anthropology”, Rose (2022) contends that there are issues with the nature of the evidence being provided by social anthropologists. He argues that there should be a distinction between what he describes as “forensic social anthropology” and “expert social anthropology”. While ultimately interlinked, Rose suggests that forensic applications require the detection and explanation of “causal processes that link culturally specific ideas to real-world instances of human social interaction” (Rose, 2002, p. 27). In contrast, expert social anthropologists “advise on whether causal models defined by the terms of a given legal process have been substantiated” (Rose, 2022, p. 27). As discussed in other disciplines, being an expert in the field does not automatically mean the evidence provided is reliable (Edmond & San Roque, 2014) or valid (Stern, Cuellar, & Kaye, 2019). Rose frames the “distinction between forensic and expert social anthropology in terms of the legal distinction between ‘fact witnesses’ and ‘expert witnesses’” (Rose, 2022, p. 27).

Rose spends some time discussing nomenclature, specifically the differences between terms used in the US and UK and uses the terms “parent” and “child” to describe and define the different fields of anthropology. He argues that there are noteworthy differences between physical and social anthropology, with the former being functionally orientated and the latter being thematic. Rose goes on to argue that the exception to the distinction in criteria for specialisation is “the specialization of forensics” (Rose, 2022, p. 29) because there are specific criteria set by the legal community for the provision of expert evidence. Scrutinization of the nature of forensic evidence in general is a subject that has been widely discussed, particularly following the publication of reports from the National Academy of Sciences (Anon., 2009) and The President’s Council of Advisors on Science and Technology (Holdren & Lander, 2016) which highlighted the shortcomings of specific types forensic evidence and the potential for cognitive bias to influence analyses and conclusions. In associated sub-disciplines of anthropology such as forensic (physical) anthropology, evidentiary standards have been discussed (Christensen & Crowder, 2009). Further, the importance of testimony being testable through a scientific method, subject to peer review, based on established standards that have a known or potential error rate, and being widely accepted by the relevant scientific community has been widely established (Grivas & Komar, 2008).

While the detail (including figure 1, page 30, which proposes a three-part model of forensic specialisation in anthropology) given to the discussion of nomenclature may be considered superfluous, Rose raises an important...
point regarding the requirements to act as an expert witness. He refers to social anthropologists “working...outside the academy” (Rose, 2022, p. 30). Rose also discusses the difficulties faced by social anthropology in interacting with the law (a theme also addressed in other forensic fields – Hackman, 2020). He contends that these difficulties are a result of how the discipline of social anthropology is organised as a field of social science, specifically without formalisation and professional regulation. Given the potential ramifications of opinions provided by so-called “specialists” in legal proceedings (most notably, wrongful convictions – Brooks & Moshayedi, 2020), increasingly, there are discussions about the need for accreditation and certification to assess technical proficiency. Such subjects have been discussed in other sub-disciplines of anthropology, namely, forensic physical anthropology (Gamble & MacKinnon, 2014; Passalacaqua & Pilloud, 2018).

It may be argued that in making a distinction between “forensic social anthropology” and “expert social anthropology” Rose is attempting to examine what it means to be an expert witness and explore how the courts appropriately evaluate the value of social anthropology evidence. Similar to forensic medicine, practitioners of which have reflected on the nature of the value of their evidence in court (De Boer, Fronczek, Berger, & Sjerps, 2022), social anthropology, is not a discipline where opinions can be tested in the same way as other forensic science disciplines such as fingerprints or DNA. That is, when dealing with human behaviour, it is not always possible to establish a robust evidence base that can be scrutinized in the same way and to the same extent as the traditional forensic sciences. Thus, as Rose argues, it is necessary to re-think how social anthropology evidence in court is understood and used. Not only is it important for the role of the social anthropologist in court to be made on a case-by-case basis (Rose, 2022, p. 35), but, it may be argued that there is a requirement for the legal community to ask different questions (not dissimilar to the way in which questions regarding the degree of force in cases of skeletal trauma may be reconsidered – see De Boer, Berger, & Blau, 2021). As Rose states “legal practitioners often struggle to reconcile their expectations of expert evidence with the form of evidence that social anthropologists actually submit” (Rose, 2022, p. 31). Therefore, the need to educate the legal community about the nature of the evidence is vital. In the field of forensic physical anthropology, this has resulted in the development of educational tools such as “primers” for courts (Anon., 2021, 2022) and practice notes (Anon., 2021).

Rose’s reflection on the distinction between the role of the social anthropologist as a forensic investigator as opposed to an expert witness comes at a pivotal time as increasing scrutiny is placed on the nature of expert evidence and the responsibilities of the expert. While evidentiary requirements to establish the credibility and legitimacy of social anthropology as a discipline have previously been explored (Lambert, 2009), Rose provides a discussion that may, as he argues “allows judges, lawyers and other legally empowered authorities to make clearer decisions about the intended purpose of seeking evidence from social anthropologists” (Rose, 2022, p. 35).

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References


