Introduction

Could the eyes of a murder victim hold the secret to the identity of their killer? The question of whether a photograph of a victim's retina could provide an image of the murderer at the time of the killing fascinated forensic doctors and laypersons alike in late nineteenth-century France. Those who were hopeful about this possibility posited that practitioners of forensic medicine could capitalize upon the advent of photography in order to solve crimes. A periodical in 1863 speculated that if forensic doctors operated on and photographed the retina of a murder victim within twenty-four hours of death, the image examined under a microscope could reveal the last object or person the deceased saw before their death.[1] The courts soon thereafter explored the possibility. During a criminal investigation of a rape and murder in Châtellerault near Poitiers in 1866, the investigating magistrate (*juge d'instruction*) called upon a medical expert to photograph the victim's retina. The doctor complied by removing her eyeballs but refused to proceed further, deeming the experimental technique beyond his capacities and only suitable for leading forensic doctors in Paris.[2] In 1869 the Society of Legal Medicine took up the issue when a doctor sent a photograph of the retina of a woman who was murdered along with her child and dog in 1868. The society enlisted its member Doctor Maxime Vernois to study the case. Vernois concluded that the photograph merely reproduced the superficial anatomical state of the retina. He discounted the notion that the image of a murderer could be found on a victim's eyes.[3] However,

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interest in the theory persisted, particularly in reference to high-profile murder cases. For example, a concerned citizen wrote to judicial authorities to call for this procedure during the 1887 criminal investigation of Enrico Pranzini, an Egyptian migrant, for the murders of a high-end prostitute, her daughter, and her servant in Paris.[4] A periodical had earlier issued a similar appeal during the investigation of Sébastien Billoir for a grisly murder in Paris in 1877, but the prominent forensic doctor Georges Bergeron whom the court summoned in this case rejected the proposed technique.[5]

The controversial theory of the tell-tale eye was part of broader debates about the possibilities and limits of forensic medicine, also known as legal medicine. Moreover, it revealed the enormous public interest in the field. Both lay persons and forensic doctors grappled with the question of the extent to which legal medicine could reveal truth, furnish legal proof, and serve justice. This question was particularly salient in the context of new legal changes ushered in by the French Revolution and the rapidly changing state of medical knowledge. This book examines how new forms of medical and scientific knowledge, many of which were pioneered in France, were applied to legal problems and the administration of justice from the Revolution to the end of the nineteenth century.

During this period, France was at the forefront of the field of forensic medicine. While it did not emerge as a distinct specialty until the nineteenth century, its origins can be traced to antiquity. What would eventually become known as forensic medicine began to take shape in the sixteenth and seventeenth centuries. Important early works included those of Ambroise Paré, the sixteenth-century French surgeon, and Paulo Zacchia, the seventeenth-century Italian physician to Pope Innocent X and medical expert for the Rota Romana, the highest court of canon law. In Old Regime France, the position of a court-appointed medical expert was usually a venal office; in other words, these offices were a form of property, sold by the state in order to raise money for the crown. Revolutionaries abolished venal office holding and the *médecins jurés*, the sworn physicians or surgeons holding these offices. In Revolutionary and post-Revolutionary criminal and judicial proceedings, the courts called upon medical practitioners whom they designated as medical experts as needed. These *médecins légistes* replaced the office-holding *médecins jurés* of the

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Old Regime.[6] Additionally, Revolutionaries dissolved and then reestablished French medical schools. In 1794 the Revolutionary legislature created newly appointed chairs in legal medicine at the medical schools in Paris, Montpellier, and Strasbourg.[7] Revolutionaries also reformed and centralized hospitals, which became the primary place of medical teaching and learning with an emphasis on hands-on instruction. Paris became the epicenter of a new form of "hospital medicine" that emerged during the Revolution and subsequently spread across the rest of Europe and beyond. Physical examinations and autopsies became principal techniques of hospital or clinical medicine and the nascent "clinic."[8] This period also saw the rise of medical specialization, and legal medicine became a distinct specialty.

Revolutionaries also made sweeping legal and judicial changes, including introducing trial by jury for felony offenses and making legal representation available to the accused in criminal cases. The introduction of juries for these crimes marked a shift from the strictly inquisitorial procedures of the Old Regime to the introduction of some accusatorial procedures – within a largely inquisitorial system – that allowed for defense counsel and privileged oral testimony and debates during jury trials. Subsequent Napoleonic law codes dictated that jury trials were limited to the assize courts, the trial courts for the most serious offenses or felonies (*crimes*). Every *département* in France had its own assize court, which held quarterly sessions headed by a presiding judge (*président*), whom associate judges assisted. Twelve jurors decided guilt by answering a series of specific questions posed by the presiding judge. Seven jurors were needed for convictions. Medical experts needed to present their findings in a clear and persuasive manner to jurors. Revolutionary and post-Revolutionary lawmakers operated under the principle that well-educated and well-trained medical experts could establish scientific proof and enlighten jurors, who would then deliver just verdicts.

Despite the succession of different political regimes between 1789 and 1900, there was considerable continuity in the basic structure of France's legal system. The Napoleonic Code of 1804 (still in force) and the Penal Code of 1810 (in force until 1994) laid the foundations of French civil and criminal law. Napoleon's codification of French law created a unified modern judicial system. The highest court, or the supreme court, was and remains the Court of Cassation

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(*cour de cassation*), the highest court of appeal that has jurisdiction over all civil and criminal matters in France. The court determines whether lower courts have properly applied the law. French appellate courts (*cours d'appel*) hear appeals on matters of fact for cases judged by the courts of first instance. Civil courts of first instance include regional courts (*tribunaux de grande instance*) and district courts (*tribunaux d'instance*). Criminal courts of first instance include the assize courts; the correctional courts (*tribunaux correctionnel*), composed of three professional judges in each *arrondissement* or district that try misdemeanor offenses or lesser felonies (*délits*); police or local courts that try petty offenses (*contraventions*); and specialized criminal courts, including military tribunals.

French legislators envisioned an important role for medical experts in forging justice by providing evidence during preliminary investigations as well as trials. Nineteenth-century criminal proceedings generally began with an investigation by a pretrial judge or investigating magistrate who composed the dossier of the case, including the depositions of witnesses, the testimony of the accused, and medicolegal reports if applicable. The examining magistrate weighed whether there was enough evidence to warrant bringing the case to trial. He would then either drop the inquiry by issuing an *ordonnance de non-lieu* or send the dossier to the correctional court for misdemeanors or the *chambre des mises en accusation*, an indictment court composed of judges, for felonies. Examining magistrates increasingly relied upon the written reports of the medical practitioners whom they summoned to gather forensic evidence. These reports were often decisive in judges' and juries' verdicts, but many factors influenced how heavily they weighed these reports in any given case. Medicolegal experts became a growing presence in the courts through their written reports as well as their oral testimony in assize court trials, where their authority depended on their ability to present evidence clearly and convincingly to juries.

The period from the late eighteenth century to 1900 was a crucial one in the rise of expertise and professionalization in general, particularly with regard to jurisprudence and medicine. The status of the legal and medical professions rose in the nineteenth century, yet doctors' status was below that of lawyers.[9] In 1803 the French state passed a law reorganizing the medical profession and setting the conditions under which medicine could be legally practiced.[10] The law established

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the first uniform licensing system for medical practitioners in France. It distinguished between "doctors of medicine or surgery," lesser-trained *officiers de santé* (health officers), and certified midwives. Doctors and surgeons sought to emphasize the boundary between them and less credentialed practitioners as well as those with no formal training who engaged in unofficial, illegal medical practice, including empirics, folk healers, and charlatans. The practice of legal medicine presented doctors, surgeons, and *officiers de santé* with the opportunity to advance their professionalization agenda and to try to demonstrate their superiority over their unlicensed rivals. It also carried risks of diminishing public confidence in learned medical knowledge and authority. While elite doctors teaching legal medicine at the medical faculties in large cities eagerly carved out a greater role for themselves and their colleagues in the legal arena, the attitudes of other medical practitioners varied more widely. Some practitioners, particularly those in rural areas with a dearth of physicians and surgeons, were reluctant recruits whom the state compelled to perform medicolegal duties. Other medical men practiced legal medicine as an avenue of professional advancement to build their reputation or clientele and earn a modest income. Although the practice of legal medicine was central to the professional identities of a cadre of doctors, it was merely incidental and a state-imposed obligation for many medical practitioners. Considerable social diversity within the medical profession, including wide disparities in income and specialized training, shaped these varied attitudes.

Much of the work of historians studying the intersection of law and medicine concerns the Anglo-American context.[11] One of the most significant themes in Anglo-American scholarship is the controversial role of the coroner, an appointed or elected public official in England and North America who did not necessarily have any background or training in medicine or death investigation.[12] Historian James Mohr has traced the declining importance of medicolegal education in medical schools and the increasingly strained relationship between medicine and the law in America over the course of the nineteenth century.[13] Moreover, Tal Golan has argued that the more English and American courtrooms featured scientific expert testimony during the nineteenth century, the less common law courts and the public respected it.[14]

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However, a different story emerges from the model of legal medicine in France, where forensic expertise was met not with constantly diminishing respect but with varied responses and mostly critical acceptance. France developed a fully fledged, formal academic discipline of forensic medicine earlier than England and America, where its development lagged behind that of continental Europe. France's preeminence in forensic medicine in the early nineteenth century only became rivaled or eclipsed by Germany in the mid to late nineteenth century. While the circulation of scientific knowledge crossed national boundaries, the practice of forensic medicine operated in distinctive ways within particular legal, political, social, and cultural contexts. This study is a social and cultural history of legal medicine in modern France, which takes the French Revolution as its point of departure and focuses on nineteenth-century developments. Its endpoint is the turn of the century, when the nascent field of forensic science, much of which focused more broadly on crime-scene investigation and laboratory analysis of trace evidence, eclipsed forensic medicine. I use the terms forensic medicine and legal medicine synonymously to refer to the application of medical and scientific knowledge and expertise to the enforcement of laws and to legal problems.

Legal medicine was a vast field encompassing several disciplines and specialties, including, but not limited to, psychiatry, toxicology, chemistry, pathology, and anatomy. Psychiatry emerged as a fully distinct clinical profession and discipline in nineteenth-century France, and its contested uses in the legal arena have inspired a substantial body of scholarship. French psychiatrists advanced new understandings and controversial theories of insanity that sparked medical and legal debates about the scope of criminal insanity.[15] While this study primarily focuses on the forensics of the body rather than the mind, it deals with psychiatry to a certain extent to illuminate other aspects of forensic medicine under examination. Clashes between medical and legal professionals were generally more pronounced in forensic psychiatry than legal medicine as a whole. Medical practitioners' efforts to persuade judges, juries, and the public were often more effective when dealing with visible material matters rather than states of mind.

This book homes in on several kinds of medicolegal interventions and builds upon Frédéric Chauvaud's work on the history of medicolegal expertise in modern France.[16] It considers not only autopsies and

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toxicological expertise but also less studied medicolegal interventions, such as those involving sexual offenses against children and efforts to detect malingering, the practice of feigning medical conditions for a specific purpose. This study focuses on forensic evidence in criminal investigations and trials, particularly for felony crimes including murder, poisoning, infanticide, and sexual assault. The rise of forensic medicine also shaped civil legal proceedings, which increasingly featured forensic evidence in cases involving personal-injury litigation, contracts, marriages, wills, and divorces. Although these medicolegal matters in civil law are beyond the scope of this work, the book nonetheless ventures beyond the strictly criminal context when discussing death verification and malingering in relation to the administration of the law.

This book demonstrates the centrality of gender in legal medicine. Women, particularly midwives, had played a significant role before the courts under the Old Regime as experts on women's bodies, but women were largely excluded from the practice of forensic medicine in nineteenth-century France.[17] Practitioners of forensic medicine, which included physicians, surgeons, chemists, pharmacists, and *officiers de santé*, were almost exclusively male during this period. Furthermore, medical men called into question women's status as authorities on their own bodies and those of their children. In their efforts to establish their authority, practitioners of legal medicine reinforced patriarchal norms, particularly in relation to debates and cases involving sexual assault, infanticide, the murder of intimate partners and family members, and gendered notions of criminality and duplicity.

This study illustrates how the practice of legal medicine was bound to the interests of the French state, the professional aspirations of male medical practitioners, and to the lives and bodies of ordinary French men, women, and children. Medicolegal authority and state power were inextricably linked in modern France. Medical practitioners whom judicial or state authorities summoned served in many respects as agents of the state. These medical men also sought to advance their own agenda and ambitions. The practice of forensic medicine offered doctors an avenue to elevate the status of their profession as a whole and to demonstrate their own professional standing and competence. However, serving as a medical expert in criminal investigations and

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trials carried inherent risks, including those that could result in judicial errors and wrongful convictions as well as the loss of professional credibility. The risks were most pronounced in areas of medicolegal expertise that were in great flux, such as toxicology, and for medical practitioners who lacked knowledge and experience in forensic medicine. Additionally, some criminal trials involved public battles among medical experts. These contests often pitted lesser-trained provincial medical practitioners against elite forensic doctors in Paris or other cities and raised questions about the role of forensic expertise in the pursuit of justice.

This book argues that the growing authority of medical experts in the legal arena was nonetheless subject to skepticism and sharp criticism. It reveals the tensions between a new confidence in the power of scientific inquiry to establish guilt, innocence, and legal responsibility and uncertainty about the reliability of forensic evidence, particularly when assessed by poorly trained practitioners. Issues of uncertainty, error, competence, and confidence were at the heart of forensic medicine. Practitioners of forensic medicine had to navigate the uncertainty inherent in their field. Medical men faced considerable challenges in investigating death and performing autopsies, combatting malingering, detecting poison, providing evidence in criminal inquiries involving reproductive matters, and evaluating the signs of sexual assault. Nevertheless, in their efforts to establish authority and to raise the profile of their profession, many forensic doctors articulated great confidence in their abilities and findings. This confidence was not always well founded, particularly in the context of rapidly changing medical knowledge and practitioners' limited training and experience in certain medicolegal matters. Medical men's involvement in criminal proceedings influenced the course of justice in ways that elicited both praise and criticism from public prosecutors, defense attorneys, judicial magistrates, fellow doctors, and the press.

The legitimacy of medical and scientific expertise depended upon the public's acceptance of it. Additionally, the practice of forensic medicine involved the interplay of different kinds of knowledge. Expert testimony in the courtroom aimed in part to bridge the gap between learned and lay medical knowledge for jurors. In turn, the popular press, particularly its coverage of highly publicized trials, spread public awareness of medicolegal issues. On the one hand,

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growing awareness of doctors' investigative methods and the popularization of forensic pathology and toxicology possibly discouraged some potential criminals. On the other hand, as laypersons became more familiar with legal medicine, some sought to use this knowledge to their advantage to evade the law. Many forensic doctors expressed confidence that doctors and justice would prevail, but others were less sure. The importance that the public and the courts placed on scientific or medical proofs depended on the confidence or skepticism with which they received expert testimony in addition to other considerations. Moreover, juries weighed forensic proofs against another model of proof in the French legal system: "moral proofs."[18] The boundaries between so-called scientific and moral proofs were often blurred. While forensic doctors presented their findings and claims as objective scientific realities, the practice of forensic medicine was steeped in the moral judgements and social assumptions of its practitioners. Moreover, medical knowledge was constructed and received in tandem with shifting political configurations, new social dynamics, and cultural changes.

This study draws upon a wide range of sources, including archival records of criminal investigations and proceedings, published and unpublished forensic medical reports, newspapers, periodicals, forensic treatises, textbooks, and manuals. The most extensive body of archival sources for this book consists of records from criminal cases at the assize courts, where serious crimes were tried before all-male juries during the nineteenth century. These records include commentary on the proceedings and trial outcomes by the president or other magistrate of each assize court and *dossiers de procédure*, which contain interrogations, depositions, and forensic medical reports. Some doctors also published the forensic reports that they submitted to judicial authorities as books or articles. The early nineteenth century saw an explosion of medicolegal publications, and these publications proliferated over the course of the century. The *Annales d'hygiène publique et de médecine légale*, the first journal on legal medicine, founded in 1829, became the leading venue for forensic doctors to publish their research, findings, and case studies. The work of medicolegal experts reached a larger audience through press coverage of their roles in trials. The *Gazette des tribunaux*, a popular legal periodical established in 1825, published accounts of court cases across

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France, and many of these accounts featured trial transcripts of the testimony of medical experts. Moreover, this daily periodical offers the most complete records of courtroom testimony and arguments, since French courts did not create their own jury trial transcripts.[19]

The following chapters of this book are organized thematically around different kinds of medicolegal interventions, bodies, and legal problems. The book begins by examining doctors' efforts to diagnose death and their role in investigations of sudden or suspicious deaths. Chapter 1 also explores the growing public fascination with dead bodies, particularly those on display at the Paris morgue. It analyzes the tensions between doctors' confidence in their abilities and the field of forensic medicine, on the one hand, and anxiety about insufficiently trained and incompetent practitioners who performed medicolegal duties that exceeded the limits of their knowledge and skills, on the other. Chapter 2 examines the construction and contestation of expert authority in cases of suspected poisoning. In tracing the rise of forensic toxicology, this chapter highlights conflicts among experts, uncertainty about a rapidly changing state of knowledge, and disagreements about standards of proof and the risks of judicial errors. Turning our attention from dead to living bodies, Chapter 3 analyzes medical men's methods of distinguishing between real and faked conditions in order to unmask malingerers and establish their professional authority. Malingering became a pressing concern for many practitioners of legal medicine, largely in response to the introduction of conscription during the Revolutionary and Napoleonic Wars. Some doctors went to great lengths to detect and expose malingerers by using deceit, coercion, painful procedures, and altered states of consciousness as diagnostic tools.

The last two chapters consider medicolegal expertise in relation to gender and sex, revealing the entanglements between moral judgments and medical evidence that determined judicial verdicts. Chapter 4 examines the challenges that medical men faced in reproductive matters and crimes, particularly infanticide. It argues that medical experts played central roles in infanticide investigations and prosecutions, yet jurors often privileged their sympathies for the women on trial over damning forensic findings. Social attitudes toward infanticide and the women accused of these crimes shaped jurors' consideration of forensic evidence and trial outcomes. The final chapter

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analyzes the role of doctors in the prosecution of sexual crimes against children. In some cases, doctors provided forensic evidence that was critical to prosecuting these crimes. In other cases, doctors dismissed accusations of sexual assault and maintained that children, particularly girls and working-class children, were not as innocent as they seemed. Lastly, the conclusion and epilogue consider the shift from legal medicine to forensic science at the end of the nineteenth century and explore the enduring public interest in forensics and changing attitudes toward expertise in the twentieth and twenty-first centuries. Forensic medicine was a crucial arena in which the legitimacy and authority of scientific expertise was established for society at large, even as it was also contested.

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