

CHAPTER 3

DEFINING A PROFESSION: SURGERY, PROFESSIONAL CONFLICTS AND LEGAL POWERS IN PARIS AND LONDON, 1760–1790

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A historical inquiry into eighteenth-century surgery is quickly confronted with a strange field of practices dwelling somewhere between knowledge and power. Indeed, surgery consisted of a set of acts which were at once quite different from today's notion of an invasive "operation" but found themselves nonetheless at the core of the "art of healing." For the medical historian, this hybridity suggests the importance of surgery for understanding early modern medicine, but at the same time makes it difficult to grasp it as a historical object. In France and Britain, for example, its professional statutes were similar to those of other medical occupations, with which surgeons occasionally shared institutions and know-how,¹ and yet surgeons formed a distinct corps and formulated a distinct discourse based on their own expertise. Defining the contours of the profession and the construction of its expertise within the medical community writ large was thus consistently challenged by the amphibious nature of such a unique praxis.²

1. Pomata, *La Promeza*; Pelling, "Medical Practice;" Pelling, "Occupational Diversity;" Pelling, *Medical Conflicts*.

2. This article would never have been able to be published without the demanding readings of Natalia Muchnik, Nicolas Lyon-Caen, Elisa Andretta, Maria Pia Donato, Hélène Lemesle, Robert Carvais, Karen de Bruin and Steve Sawyer: my warmest thanks to them, remaining shortcomings obviously being mine. It was presented in parts in Metz ("L'expertise comme objet local," Dec. 2005), in Cracow ("The Global and the Local, Second ESHS Conference," Sept. 2006) and at Saint-Denis ("Pouvoir, santé et société,"

The sociology of professions, for which medicine has commonly constituted the model, is insufficient for grasping this historical object. For example, Jan Goldstein's reconstruction of the concept of the "medical profession" in Paris at the end of the eighteenth century from regulations and legal texts argues that these historical models illustrate "the dependence of the concept of 'profession' on explicit socio-political conditions and its sensitivity to their fluctuation."³ Yet, this analysis of the medical profession, which she admittedly uses with caution, seems inadequate in the case of surgeons precisely because they were challenged with defining their profession within the medical profession itself. In this context, Andrew Abbott's *The System of Professions* which understands professions as a dynamic "system," and thus studies the conflicts of jurisdiction between each of them, is more promising.⁴ In the history and sociology of science (science studies), David Bloor, the Edinburgh School and other historians have further developed such a perspective by questioning the social foundations of scientific knowledge. They have studied controversies, in which intellectual, institutional, social, and even political conflicts, were put forth in order to understand how the legitimacy of a scientific argument was constructed or undone.

Such a perspective appears particularly appealing for unravelling the complex world of eighteenth-century surgeons. The following study develops this approach by focusing on the role of legal expertise in defining the surgical field. Legal expertise offers a privileged perspective for understanding the formation of surgical expertise because it at once reduces the object of study and is particularly relevant for the historian that seeks to explore the principles of professional practice.⁵ As it was required by courts of law, which imposed strict rules and regulations on the different occupations under the heading of the "art of healing"—physicians, barbers, matrons and other "experts"⁶—legal medicine opens a window for

premières journées d'histoire du droit de la santé, Nov. 2006).

3. Goldstein, *Console*, 15.

4. Abbott, *The System*.

5. Fischer-Homberger, *Medizin*; Crawford, "The Emergence;" Clark and Crawford, *Legal Medicine*; Barras and Porret, "Homo criminalis;" De Renzi, "La Natura;" De Renzi, "Witness;" McClive, "Bleeding Flowers;" Porret, "Crimes;" Porret, "Limiter l'arbitraire;" Porret, "Viols."

6. Pastore, *Il Medico*.

the historian into the unusual relationship between knowledge and power, between legal practices and professional jurisdiction. In particular, legal medicine, historically defined as the “art of making reports” or “expert witnessing” according to legal procedures, provides insight into how socially- or legally- defined occupations shared legal medicine expertise.

Through a comparison of surgeons and *chirurgiens* in London and Paris between 1760 and 1790, this article suggests that the surgical profession’s jurisdictions and its political principles were defined precisely within such a legal context. Furthermore, it is argued that these legally-defined contours spread outside the courtroom into the social sphere of occupations and the relationships between professionals and clients. The article thus proposes an analysis of the legal framework for “expert witnessing” in surgical matters called surgical “jurisprudence” on each side of the Channel followed by a sociology of surgical witnesses through the study of expert reports. This second section brings to light the interaction between medical occupations within the courtroom. Lastly, the article inverts the perspective by analyzing how the legal institutions represented the profession and helped define the internal hierarchy of surgical profession and thereby reveals how expert witnessing generated an internal restructuring and a reorganization of their power within the urban context.

Witnesses and Experts: Legal Frames for Court Medicine

Men introducing themselves as “surgeons” or “*chirurgiens*” were a common sight in eighteenth-century courtrooms in Paris and London, both as the accused and as witnesses.⁷ Furthermore legal archives bring to light a number of occasions when surgeons spoke because of their special status as judicial experts or to testify during an examination of either the victim or the accused. Each case resulted from a technical expertise which was acknowledged as such by the judge or the jury. These legal contexts provide a fertile ground for comparing the emergence of a discourse of medical expertise. A comparison of the role of medicine in court cases

7. AN, Y 9651, “Procès verbal d’emprisonnement des nommés Loureau et Soulan garçons chirurgiens Et plainte par Etienne Goujot, marchand de vin” (20 mars 1760).

in Paris and London reveal striking similarities in the foundations of legal expertise on both sides of the Channel. Within a comparative context, the constitution of legal expertise demonstrates the importance of the legal context for sketching the outlines of expert legitimacy.

Such expertise can be attested to in King Bench's civil court, before Lord Mansfield—e.g. in life insurance cases—or before the *Lieutenant Civil* of the *Châtelet*, for contesting medical expense invoices.⁸ For criminal cases, surgeons were often witnesses in the Old Bailey court or in the *Lieutenant Criminel* of Châtelet's jurisdiction. In addition, they practiced in the courts of individual dioceses.⁹ Thus at the beginning of the century, Jean Devaux, in his synthesis on the *Art de faire les rapports en chirurgie*, distinguished three types of expert testimony or "reports": "reports in the strict sense of the word, excuse certificates (*excoines*), & estimations." By "report," it must be understood "certification in justice, made by one or a few titled surgeons, of the state in which they have found the human body alive or dead, as a whole or in some of its parts."¹⁰ Surgeons were indeed actors of legal procedures, by their examination of the victim's or defendant's body and their judgement consciously formed.

In Paris and London, surgeons' testimonies based on their professional competence shared a similar legal foundation.¹¹ Their truth claims required an oath by judicial powers. This was obviously the case with London assizes, where surgeons still had the status of witnesses. In French judicial practices, this original status was transformed in stages. The lack of verification between the physician and the surgeons on the one hand, and the other witnesses on the other, constituted a procedural irregularity in the eyes of lawyer Élie de Beaumont. The later referred to the 1670 *Ordonnance criminelle* to make his point: in two different places the Ordinance—Title 8 art. 12; Title 9, art. 16—characterized experts as witnesses; this meant that experts were to "be separately heard in their reports, verified and confronted, in the same way as the other witnesses."¹² In Paris, various regulations insisted on the compulsory oath physicians and

8. Oldham, *The Mansfield Manuscripts*, 474 sq.; AN, Y 1902–3.

9. Alteroche, *L'Officialité*, 48 and 55.

10. Devaux, *L'Art de faire des rapports*, 2.

11. Prodi, "Le serment et le tribunal de la conscience," in *Idem*, *Christianisme*.

12. Beaumont, *Mémoire* (1762), 59.

surgeons had to take before turning in their reports. When, in 1692, a royal edict created offices of sworn surgeons and physicians, they had to take an oath when they took up their post, along the same lines as midwives when they asked for a sworn status.¹³ “These Physicians and Surgeons were exempted from taking oath and declare their reports true at each visit, because they have taken their oath before Justice.”¹⁴ Several rulings extended the writing up of reports to surgeons who did not have sworn *offices*, provided they took an oath.

The oath gave “judicial authority” to physicians and surgeons and also a status of truth to written reports. In the absence of an oath, physicians and surgeons had to “declare their reports true,”¹⁵ an injunction which was repeated on several occasions after 1670. The oath turned the practitioners’ assessment into evidence. It calls upon the transcendence of justice and inscribed it into a ritual frame, largely constrained by the social group.¹⁶ Thus the surgeons’ discourse became “true” or “genuine” in the ritual framework imposed by the legal institution in its attempts to exercise its expertise over medical practitioners—in much the same way as other occupations which delegated experts.¹⁷ In the territory of urban court jurisdictions, the legal power granted by the oath was manifest down to the errands of the surgeons who came to Old Bailey in order to give their testimonies in the case of London, or the Châtelet in the case of Paris. Reports from the Châtelet reminded the names of the requiring judge and the surgeons coming into the court in order to take their oath prior to their *expertise*.

London surgeons, on the other hand, balked at the constraint of giving testimony before the court. A number of witness reports insisted on the fact that “the coroner’s jury, the grand jury, and the petit jury at the Old-Bailey were accompanied with disagreeable circumstances enough to make anyone wish to decline such sort of attendance.”¹⁸ Even though

13. Édît du roi, février 1692; AN, Y 10557, “Registre matricule.”

14. *Nouveau stile*, III.71.

15. *Ibid.*; BNF, MS Joly de Fleury 261, fol. 5. “Notes” (sd).

16. Levy-Bruhl, *La Preuve*, 98–102; Garapon, “La notion d’engagement,” 138.

17. On the issue of judges’ expertise, see Lemerrier, “The Judge, the Expert” in this volume.

18. Foot, *An Appeal*, 7, quoted by Crawford “Legalizing Medicine”, 91.

witnessing practitioners were not to be paid for their assessments before the 1836 Medical Witness Act, refusal to appear could be subpoenaed with a fine of up to twenty pounds.¹⁹ In Paris, the remuneration of medical experts was the direct result of their position as *officiers* of the Châtelet. Experts sworn before the Chambre Civile, as some of the reports mention, received from twelve *sols* six *deniers* to up to thirteen *sols*, depending on the amount of the contested invoice—one document alone specifying however the high sum of twenty-four *livres*.²⁰

Recent studies have stated the relative weakness of forensic medicine in England before the nineteenth century, as compared to other countries in continental Europe. This is confirmed by the weak institutionalisation of specialized legists, and the small number of procedures for which a professional testimony was required. According to Catherine Crawford, it resulted from procedural differences which, in England, devaluated the status of the expert, who was poorly paid, and did not require a law of proof equivalent to that required in the Roman law tradition. On the contrary, the great success of medical practitioners on the continent could be explained by similar modes of arguing in the professions of law and medicine.²¹ To these institutional considerations, can be added a difference in the conception of crime. At the beginning of the seventeenth century, coroners' inquests were solely aimed at cases of violent death. Therefore, proof was accessible to the senses of the jury men. Establishing facts did not require recourse to a medical practitioner. However, after 1751, an act regulating the salary of the county coroners extended the realm of their inquests, as they were paid for "all inquests duly held."²² This *de facto* enlargement of the coroners' attributions explains that they required the help of surgeons. According to Umfreville, who wrote one of the first textbooks for coroners, "If the inquiry be of the death be mortal or not, you ought to have a surgeon to be present and attend with you, to examine and show the wound: and who should likewise attend the

19. For a full argument on this point, see Crawford, "Legalizing Medicine," 90–3.

20. AN, Y 1902–3.

21. Crawford, "Legalizing Medicine," 94–101.

22. 25 Geo. II, c/ 29 s. I. The Act was extended to borough coroners by 5 & 6 Will. IV, c. 16 with minors modifications: Havard, *Detection*, 38.

coroner and give evidence upon oath.”²³ Several studies have put into evidence that, as early as the seventeenth century, surgeons frequently testified before juries, in assizes and church jurisdictions which were re-established after 1660, when sexual abuses, homicides, assault and battery or infanticide were concerned.²⁴ However, in the last crime, violence was hardly apparent. According to Mark Jackson, it was the suspicion of infanticide which led to promoting the preliminary inquest of the coroner, who in turn sought the surgeon’s council. These legal officers required the practitioners’ expertise, practitioners who then established and discussed proof procedures in order to establish the facts before the trial.²⁵

In criminal trials of the Old Bailey, there were few other medical occupations when compared with the surgeons, if one considers the title mentioned by witnesses, scrupulously transcribed before the testimony detail. Surgeons testified more than two hundred times over the period of 1760–90. However, during the same period, none of the twenty-one physicians who stood as a witness did so in the name of his professional expertise. Midwives, on the other hand, testified fifteen times and apothecaries testified about the same number of times—sixteen. This can be explained by the proximity of their occupation to that of surgeons, whose title they often took up as “surgeon-apothecary.”²⁶ The occupation of surgeon’s played a privileged role in late eighteenth-century London courts.

This virtual monopoly could not be found in Paris where the procedure organized the sharing of expertise among the different *corps and communautés* (guilds) dealing with the body. The ancient institution of medical experts attached to the Court of Châtelet was adopted under the monarchy of Louis XIV. The 1670 Criminal Ordinance which applied to the kingdom made provision for “every injured person to be visited by a physician or a surgeon.” The 1692 Edict institutionalized *offices* of sworn physicians or surgeons and extended Châtelet customs to the whole kingdom. The practitioners, nominated by the King’s First Physician, who held the offices alone were henceforth authorized to make these “visits to injured, deceased, drowned, mutilated, etc. Persons.” This criminal authority was

23. Umfreville, *Lex Coronatoria*, 295.

24. Harley, “The Scope.”

25. Jackson, “Suspicious Infant Deaths” and *New-Born Child*.

26. Loudon, *Medical Care*.

coupled in 1692, with a professional authority, as office holders were the only ones legally able to give apprentices the capacity to perform in surgery and to authorize midwives who wished to practice. This confusion of powers—writing up legal reports and assessing the professional capacity of practitioners who were not physicians—was soon contested as professional certification caused violent disputes. After a hard-fought struggle, the King's First Surgeon obtained that sworn surgeons, under the authority of the King's First Physician before 1723, would be deprived of all forms of control over surgeons' certification. The same year the Lieutenants of the King's First Surgeon were reintroduced and were entrusted with this prerogative. In 1732, the attempt of the First Physician to re-establish his control was aborted.²⁷ From then on, the conflict between physicians and surgeons deepened and was provisionally concluded in favor of the surgeons, who gained complete autonomy over the attribution of the right to practice.²⁸ At that time, the legal language defined the expert witness reports written by physicians, surgeons or midwives as "surgical reports" (*rappports de chirurgie*), hinting at the importance of surgeons' expertise in judicial procedures.

In the seventeenth century, the English and French archives reveal that legal expertise granted to surgeons went along with that of the validation of the capacity to practice "surgery," a discipline which did not solely belong to surgeons. David Harley argued that this certification was managed by physicians and surgeons in the Chester Court at the beginning of the eighteenth century, while in the capital city of London the prerogatives of physicians and surgeons was maintained by the corporations—Barber-Surgeons Company and London College of Physicians—until they were definitively challenged after the jurisprudence of the Rose Case.²⁹ However, being confided with a part of the legal authority, after hard-fought legislative struggles, surgeons obtained a sort of professional autonomy. The more this autonomy was based upon a battery of legal acts and jurisprudence, like in Paris, the more this professional recognition was coupled with constraints in judicial and police matters as, in 1783, surgeons were

27. BNF, MS Joly de Fleury 261, fol. 7: "Lettre de Chirac à Marly" (17 février 1732).

28. Gelfand, *Professionalizing*; Pauthier, *L'exercice illégal*, 197–245.

29. Harley, "The Scope," 46; Cope, *William Cheselden*; Pelling, *Medical Conflicts*. On the decline of the Royal College of Physicians after 1694, see Cook, *The Decline*, Chapter 6.

increasingly compelled to “come to the aid of all individuals as soon as it be required.”³⁰ According to Umfreville, such a responsibility fell to “parish surgeons”: “if the parish surgeon shall refuse to attend without being paid—and this I have known objected—you may then direct your warrant to the Churchwardens and overseers of the parish where the inquest is taking [place] to procure and send [for] one.”³¹

Indeed regulatory frameworks and legal customs differed between Paris and London: practitioners called to give their expert testimony did not have the same status, or salary. Laws of proof and crime conception may explain the relative rarity of surgeons’ expert testimonies in London, but these surgeons nonetheless had a virtual monopoly over this practice. Parisian practitioners, on the other hand, did not enjoy such a monopoly as their action was codified according to the occupation. But overall these historical differences cannot remove the striking similarities between these practices at the end of the eighteenth century on either side of the Channel: all jurisdictions—civil, criminal or ecclesiastic—were concerned with the practice of surgical expert witnessing or reporting, stemming from a particular form of sworn testimony. These distinctions reveal similarities in the expert authority acknowledged to surgeons. Legal practices were not extraneous to statutory obligations that progressively weighed in on the profession. Modalities of expert practices remained to be questioned, however, when considering the two archival series of surgeons’ reports in the court of the Châtelet and transcriptions of audiences in Old Bailey.

Surgeons as Experts: The Authority of Legal Surgery

The oath and the surgeon’s title, coupled with the status of *officier* in France, were alone required to legally give expert witness in court. Expert reports or testimonies help the historian formulate hypotheses about the technical or social principles of the legal authority of the surgeons. I have studied the proceedings of the Old Bailey’s hearings, where surgeons gave testimonies, and the “surgeons’ reports” at the Châtelet, to which

30. Parlement de Paris, *Arrêt; Nouveau stile*, II. 68.

31. Umfreville, *Lex Coronatoria*, 295, quoted by Havard, *Detection*, 7–8.

I have added a few soundings in the criminal trials of the Petit and Grand Châtelet. These trials reveal that professional issues were at stake in these expert witnessing practices.

Legal expertise was acknowledged to surgeons, even if the title of *expert* did not exist in common usage in French or in English. Their occupation qualified them as special witnesses before justice courts. In London, they presented themselves as “surgeons” and specified at times their practice location or their hospital position. Their title differed in Paris, according to civil or criminal procedures. Before the *Chambre Criminelle*, they referred to themselves as “chirurgiens commis aux rapports” (surgeons in charge of reports), or, more often after 1760, as “conseillers chirurgiens auprès du Châtelet” (surgeon-advisers at the Châtelet); Claude-Joseph de Ferrière did not list any *médecins* or *chirurgiens* under the entry “Expert” in his *Dictionnaire de droit et de pratique*, and distinguished *rapport d’expert* (expert report) from *rapport de médecins et de chirurgiens* (reports of physicians and surgeons).³² Before the judge of the *Officialité*, the Paris ecclesiastic court, Jean Picquet was to hold a commission to “write up alone and to the exclusion to any other, all reports, visits of dead, drowned, mutilated, or injured, bodies, which were ordered by justice, both in the *Officialité* and temporality of the archdiocese;” he was allowed, however, “in the case of his absence or being ill, to commission a surgeon for establishing reports or making visits.”³³ However, the civil commitments of church courts seem to have by and large ceased in France and Britain, and medical witnessing or reporting become rare.³⁴ Parisian civil procedures constituted the exception: when there was evaluation of surgical treatment invoices or work quality, surgeons chosen by the parties put on the title of *expert juré* (sworn expert), much like the other occupations.³⁵

In London, between 1760 and 1790, professional competition which might have existed among the medical occupations disappeared before the surgeons’ omnipresence. Physicians very rarely testified as experts. For instance, none of the seven self-qualified “physicians” who

32. Ferrière, *Dictionnaire*, t. I, 577–8; t. II, 438–9.

33. Alteroche, *L’Officialité*, 48.

34. Ingram, *Church Courts*, esp. 173.

35. AN, Y 8531.

gave testimonies during the decade of the 1760s did so because of their medical expertise. Rather they were motivated by other reasons: they could vouch for the moral quality of a defendant of their acquaintance, employ a servant plaintiff or defendant, be a victim of robbery, etc. No more than four doctors testified about medical examinations they were requested to make, two of them doing so in the presence of a surgeon. It must be noted thus that the witnesses who referred to medical practitioners in the course of their testimony used “physicians” the “physical men,” sometimes even the title of “Dr.” Apothecaries were about the same number in trials for murder or rape: five of them gave evidence between 1760 and 1779, among them James Farmer, “journeyman to Mr. Dalmahoy [and who] served [his] time to an apothecary” and two “surgeons and apothecaries.”³⁶ Midwives’ testimonies were also few. During the 1760s, four midwives testified for suspected infanticides; only one of them examined the defendant on the express requirement of the jury; the other gave evidence about a visit to the fresh parturient or to the new-born child. The word of these female practitioners was found in competition with the testifying “men-midwives”, a title sometimes associated with that of the “surgeon” or the “physician.” Thus, in 1762, it was surgeon and man-midwife George White’s evidence that was alone presented before the court, even though a few witnesses reported the role of a Mrs. Bickeridge, a midwife.³⁷ Witnesses’ testimonies confirm that the call for a man-midwife was more and more frequent, as the midwives’ expert evidence became rarer.³⁸

Indeed the better part of medical testimonies—more than four-fifths of the cases—were given by surgeons with varied titles: besides the “surgeons and men-midwives” who were present in infanticide cases only, one can find a majority of “surgeons,” out of which about a fifth stated his position in a hospital, and a few “surgeons and apothecaries.” However, the extension given to the professional qualification seemed particularly wide, given the people called to the witness box. I have found two “apprentices,” one “servant” and four “pupils:” the servant was attached to the domesticity

36. OBP, “John Garnett, Killing: Murder” (September 16, 1761).

37. OBP, “Mary Samuel, Killing: Infanticide” (December 8, 1762).

38. On the disqualification of midwives’ expert witnessing in court, see Fischer-Homberger, *Medizin*.

of a surgeon, as apprentices and pupils were in the course of professional education, the latter practicing in a hospital.³⁹

Therefore, in London, the legitimacy of the expert witnessing does not seem to rest on occupational qualification, since it was granted to those who were being trained. It was rather the professional “membership” in the largest sense: in a bordering case, it was extended to a practitioner’s domesticity; in another case, a man-midwife partner, Mr. Jackson, being apothecary, was called for a woman who had problems delivering her child in order to practice the art of his colleague.⁴⁰ This sociological character among the witness surgeons calls the mere technical expert principle of their testimonies into question. Moreover, a collective social identification, applied to domesticity or partners must be added to this dimension. The British specificity in this case must be qualified however. Surgeons were often called in cases of emergency, and they had to report their acts before juries or courts, be they experienced or hardly professionally educated. Contrary to French or Italian situations, these particular interventions were very rarely corroborated by practitioners, either better qualified or duly commissioned by the coroner or the court; they may have existed in France, for instance, but they are less documented in trial procedures.⁴¹ Indeed, London expert testimony seems more related to individuals’ acknowledgment of a social expertise in cases of managing emergencies.⁴² Witnesses frequently mentioned their calling an injured patient in an emergency, whose criminal death forced them to testify. Secondly, venereal disease treatment which was in the realm of their practice explained their priority in evaluating rape cases, venereal disease being one of the principal pieces of evidence in cases of sexual abuse, especially for children.⁴³ At last, they were given priority in dissections ordered by the coroner, either on site, or at the hospital, especially in the cases of suspected infanticides.⁴⁴

39. Terminology does not seem always fixed, as the prestige attached to hospital education progressively detained over the title of apprentice.

40. OBP, “Elisabeth Cowthin, Killing: Infanticide” (September 15, 1770).

41. The Calas affair gave in France the case of an emergency call to a surgeon apprentice, Antoine Gorse, when the corpse was discovered: cf. Garrison, *L'affaire Calas*, 62.

42. Havard, *Detection*, 5; Rabier, “L’invention,” Chapter 1.

43. OBP, “Charles Earle, Sexual Offences: Rape” (December 5, 1770).

44. Jackson, “Suspicious Infant Deaths,” 76–7.

Along with the social acknowledgment of a practice came administrative or territorial authority. Surgeons practiced over a limited space in urban contexts. In cases where the surgeon reported his place of residency, it appears that the latter was close to the location of the crime. This power over neighborhood was manifest in some surgeons' inquisitorial initiatives. On September 18, 1765, for instance, during Maria Jenkins' trial, who was suspected of infanticide, the role of the surgeon and man-midwife William Complin made way for the coroner's inquest. Called in by Maria's master wife, who suspected a miscarriage, the surgeon was confronted with the defendant's denials and consequently required that "they search the commodity house," where the defendant's sister would have thrown down the infant's body. He insisted that he be called if anything was found. When the corpse was found, he looked for marks of violence on the child's body and charged Maria Jenkins of having delivered it when "what had come from her since [he] had left" was brought to him. Such inquisitorial behavior was legalized the following day, when he proceeded with the infant body's autopsy, on the demands of the coroner and in the presence of another surgeon. Such coherence between professional status and local authority can be linked with the institution of the "parish surgeon" only in parts. The status, of which we know little, was mentioned in *Lex Coronatoria* or other contract documents.⁴⁵ This parish servant may have been constrained by legal obligations, in addition of his surgical practice in favor of the poor.

Paris surgeons gave evidence at the Châtelet following different civil and criminal legal procedures. In criminal cases, experts were selected from an inter-professional group of physicians, surgeons and midwives, all being in charge of their *office*. As registration archives show, these positions of medical officers were characterized by family stability.⁴⁶ Every report commissioned by the Lieutenant Criminel was thus certified by at least two different professionals. Midwives operated less often, sometimes by themselves, particularly when women were concerned, whatever the nature of the examination: suspicion of infanticide, assault and battery on pregnant woman, evaluation of delivery date but

45. Crawford, "Legalizing Medicine," 92; Warwickshire County Record Office, CR 1596/Box 90, quoted in Lane, *The Making*, 15.

46. AN, Y10557, "Registre matricule."

also search for dishonorable marks. Physicians and surgeons owning a Châtelet *office* formed a group, within which it is difficult to make clear distinctions. Nonetheless there are signs that surgeons seemed more active, when one considers, for instance, the hand that wrote reports and not just the ones that signed them. Contrary to other jurisdictions, like in Nantes where a physician and a surgeon practiced, the Châtelet required that at least three *officiers*, out of which two surgeons, wrote the reports.⁴⁷ In the imaginary town of *Tableau de Paris*, the physicians and the surgeons who accompanied the *commissaire* (police superintendent), in case of suspected deaths, were identified under the one and only title: *chirurgiens du Châtelet* (surgeons from Chatelet).⁴⁸

Indeed, police authority over urban space was not very different from that of expert practitioners at the Châtelet. Documentation shows the practitioners mobility within the town jurisdiction, as they represented legal authority on the request of the Lieutenant Criminel. Within justice courts, physicians- and surgical-advisors went into the Grand Châtelet prison and into the “*basse geôle*” (jail for corpses found on the public highway).⁴⁹ Between March 20 and 26, 1760, one could find *conseiller-médecin* Péaget and *conseillers-chirurgiens* Henrys and Fauré, at times replaced by Gour-saud, in turn in the prison of Fort L’Evesque, “on Cocatrix Street in the Cité, at the said Lorgerot, edge tool master-maker, in order to go and visit the said Pierre Picard to know his injuries” and establish the prognostic of his recovery;” they also went “on Seine Street, faubourg Saint-Victor, in the house of the said Le Cuir, market gardener” in order to establish the cause of the death of Marie Genevieve Le Cuir and on “street of the Boucheries, faubourg St. Germain, in the house of the said Fioul, seeds man, in order to go and visit the corpse of the said Henard, to know the cause of his death” and again, at the Hôtel royal des Invalides in order to visit the corpse of a disabled soldier.⁵⁰ They were commissioned all over town, for cases concerning the living and the dead, the assessment of whether a prisoner was an ex-convict, the diagnosis a particular disease—scurvy,

47. AM Nantes, FF 258 pièce n° 1.

48. Mercier, *Tableau*, vol. 5, 106.

49. AN, Y 10216 and Y 10641.

50. AN, Y 9651 and Y 10215

scabies, venereal disease—that would require a transfer to a hospital,⁵¹ the identification of the cause and the gravity of injuries, the evaluation of the weakness of mind or else the cause of death in corpses—or pieces of corpses—found in the Seine river, in the street or in a private home. Compared to London, the territorial authority of surgeons was partly undetectable because of the necessary presence of officers of the Châtelet in legal inquests; however, individual surgeons were present when Châtelet's medical advisors went for visits, which leads the historian to think of a similar form of locally-defined medical practice.⁵²

In civil cases, which opposed surgeons and patients, masters in “art and science of surgery” wrote evaluation reports with sworn surgeons and members of the Academie Royale de Chirurgie. There was therefore a clear control of the surgeons' guild, the Collège of Saint-Cosme. The guild's jurisdiction, which normally concerned its sole members, appears to have been extended onto other types of expert evaluation. The Collège was also commissioned to evaluate a worker's incapacity⁵³ and was attributed the arbitration of conflicts of interest between private individuals and practitioners, within its jurisdiction over master surgeons, privileged surgeons, dentists and oculists, with the exception of physicians and masters in pharmacy.⁵⁴

In civil and criminal cases however, *officiers* and master surgeons ruled on legal cases which were presented to them. Archives give clear evidence of the frequent call upon civil surgeons by a police *commissaire* at the beginning of the procedure. On other occasions, they gave evidence as witnesses who knew the victim. For instance, in December 1759, *commissaire* Guyot led an investigation against Charles Adancourt and Anne Gougelet, his wife, for physical abuse and ill-treatment on their daughter.⁵⁵ For their defense, they produced a certificate established on June 23, 1759, by surgeon Sébastien Fauchat, who had visited their young

51. AN, Y 10551^B.

52. *Ibid.*

53. AN, Y 8531, “Report by Arrachart on the state of Marie Jeanne Collon's eyes” (August 12, 1782).

54. AN, Y 1902–3; I have not found arbitration concerning midwives, which ought to be members of College of the Saint-Cosme.

55. AN, Y 10214, “Jugement contre Charles Adancourt et Anne Gougelet, pour sévices et mauvais traitements envers leur fille.” (17 décembre 1759)

daughter several times. He concluded that the girl was “under the attack of a poisonous scrofula, or scurvy, out of which she could not voluntarily keep her urine and faecal matters.” However, such expertise was under the control and judgement of the Châtelet *officiers*. In the preceding case, the police *commissaire* had the corpse exhumed from the cemetery of Saint-Sulpice parish, on Bagneux Street. The examination conducted by physicians and surgeons mentioned bruises on the face, buttocks and thighs, and after autopsy, effusion in the skull. It concluded with “death by ill-treatment.” In civil cases, when two surgeons’ evaluations were contradictory, it happened that the *conseiller-chirurgien juré* gave his opinion as a last resort, which confirms the pre-eminence of the *officiers*’ position over the incorporated masters of the Châtelet jurisdiction. Thus the power of the *conseillers médecin et chirurgiens en [l]a cour du Châtelet* was exercised in different realms: in the political realm, where they prevailed over the royal authority of justice; in the chronological realm, where they gave their opinion as a last resort; in the natural realm, where they alone were granted the authority to open bodies and make observations. Thus in Paris, the King’s *conseillers-chirurgiens* and *médecins* had given up their professional privileges for legal authority, based on royal power.

In the eighteenth century, all courts of justice required medical practitioners, among whom surgeons were clearly pre-eminent. This was the case in London where they gave evidence in more than two-thirds of criminal cases, and in Paris, where they operated within the framework of a mixed group of *office*-holding *médecins* and *chirurgiens*. This role brings forth the social competency granted to the surgical profession in the sphere of vital emergencies. It also highlights the territorial power that was exercised by surgical practitioners, a power which at times took the form of “parish surgeons” within London neighborhoods. Certain other European towns also show the same form of local authority among surgeons, as in the case of seventeenth-century Turin.⁵⁶ In the particular case of Paris, the secondary role of individual surgeons in justice and police was compensated by the early creation of a body of experts who practiced on the urban territory as a whole and ruled over civil and criminal cases. But, such an effective monopoly by surgeons must not overshadow

56. Cavallo, “Legerezza.”

strong professional dissensions about legal expertise. Indeed, the battle for expert jurisdictions played out also within the surgical world.

Experts and Surgeons: Medical Jurisprudence and Professional Hierarchy

As a mirror of the social expertise of emergency care-takers which was granted to Paris and London surgeons, legal medicine was subject to conflicts. The purpose of these conflicts was to define who exercised the legitimacy of expert discourse within the surgical profession. These conflicts induced changes in professional hierarchy in the second half of the eighteenth century.

In the case of Paris, historians still know very little about the changes that resulted from the desertion of urban guilds and their replacement with learned societies, whose legitimacy was acknowledged throughout the kingdom.⁵⁷ Since 1743, the creation of the Académie Royale de Chirurgie (Royal Academy of Surgery) by letters patent transformed the professional organization within the capital city. But, even though documents are scarce, the guild did not totally disappear: the Collège of Saint-Cosme, whose last institutional archives date from 1758, clearly survived, as did the titles of master or the distinction of *prévôt*, the guild representative.⁵⁸

The King's support of the new Academy's authority, however, did not immediately show in the choice of surgical experts. In civil cases, it was not before 1771 that nominated expert surgeons bore the title of "académicien" in their reports:

In the year 1772, on Friday, October 4, we, André Levret, member of the Collège of Saint-Cosme and *conseiller perpétuel du Comité de l'Académie Royale de Chirurgie* (perpetual adviser to the Committee of the Royal Academy of Surgery), man-midwife to the Court and to *Madame la Dauphine*, and Bernard Peyrihle, member of the Collège and Académie Royale de Chirurgie,

57. Gelfand, *Professionalizing*.

58. AN, Y 11860, "Compte de la recette."

doctor in medicine, of the Académie des Sciences, Inscriptions et Belles lettres of Toulouse, both of them residing in Paris, we had been carried to the Châtelet hearing [...] in our quality as experts nominated by the above sentence of September 28 last, pronounced between Sr. Tallandier de la Bussiere and M. Pierre Alexandre Le Page and Dame Marie Therese du Faus-saye his wife, in order to proceed to the settling of the contested invoice.⁵⁹

Levret and Peyrihle were indeed members of the *Collège*, before they were part of the Académie. Such declination of titles explains the fact that membership in the Académie was far from offering sufficient authority. Debates were heated during the 1760s between the *Collège* of Saint-Cosme and the Académie. King Louis XV went so far as to exclude the masters who required automatic integration into the learned society, because of their title as Paris master surgeons.⁶⁰ From the mid-1770s onwards, the title of master progressively disappeared and was replaced by a higher position in the guild, that of *prévôt* (provost).

Thus, it seems therefore that the profession, in the second half of the century, which was called to arbitrate in cases of litigation between practitioners and patients, promoted its expertise with emphasis placed on the functions of author and professor. Parisian guild membership was progressively disqualified, to the benefit of academic titles, such as adviser to the Académie or “professor aux Écolles” (professor to the faculty). In fact, the guild, having become a *Collège*, had new interest in the collective education of its *élèves* trainees in surgery.⁶¹ Having abandoned apprenticeship contracts and obtained the grade of *docteur en chirurgie* (doctor in surgery), it withdrew from other activities, which were then handed over to academicians.

Professional conflicts, which are documented in civil litigation procedures, are not absent in criminal trials. In criminal justice, however, one main issue lay in the formalization of surgeons’ expert opinion. Before

59. AN, Y 1903 (October 4, 1771).

60. Gelfand, *Professionalizing*, 64.

61. Imbault-Huart, “L’*école pratique*.”

the beginning of the eighteenth century, works on surgical reports were few. In 1684 a work was published under the pen of a prolific author, Nicolas de Blégnny, who addressed it to the professors of the Caen medical faculty. The surgeon renewed Ambroise Paré's textbook, at a time when surgeons' new obligations were confirmed by the Criminal Ordinance of 1670. Jean Devaux, Paris surgeons' guild provost, restored the authority of the capital city over the genre in 1703. He published a treatise that offered models of reports, which would classify them according to the legal nature of the report and the anatomy under scrutiny. The treatise was edited several times and was not replaced until the nineteenth century. All these works aimed at standardizing reports of the visits commissioned by judges in their legal form. Such transmission of procedural formalized knowledge was however challenged by the major changes taking place within the guild. Antoine Louis, Secretary of the Académie Royale de Chirurgie, benefited from his double title of doctor in surgery and in law to publish consultations on legal medical issues. The first one, on the certitude of signs of death, was published in 1752, as a response to current concerns about the urban management of drowning.⁶²

Another affair prompted more passion. The trial for rehabilitating Jean Calas's memory. The appeal, "currently submitted to the lights & decision of the Conseil suprême (Supreme Court of Justice)," was given particular publicity by Voltaire, who wished to stand as the great advocate of religious tolerance. The Secretary of the Académie Royale de Chirurgie used this great sound box in order to support his new "legal surgery" and thus contributed to providing medical proof of Jean Calas's innocence.⁶³ He methodically re-examined the testimony of the pupil in surgery (*élève en chirurgie*) who had been called to try to reanimate Calas' son. He also re-evaluated medical reports and lawyers' published *mémoires* by confronting them with medical authors, medical consultations given in France or in German states as well as legal affairs concerning accidentally- or criminally-suffocated corpses. Approved by the Special Committee of the Académie Royale de Chirurgie, the dissertation was applauded in the public session of the Academy, before it received its *imprimatur* from

62. Bruhier, *Mémoire*. See Denys, *Police et sécurité*, Chapter 8.

63. Bien, *The Calas Affair*; Garrisson, *L'affaire Calas*.

Sartine in 1764.⁶⁴ Archival documentation and *mémoires* of the trial in rehabilitation dating from the following year without explicitly citing Louis, do show a turnaround of the judges and lawyers' positions concerning surgeons' legal expertise. At first, they had either ignored or denigrated the competence of the surgeon-apprentice or that of the physician and surgeons commissioned for reports. After 1765, lawyers put forward the absence of sensible assault and battery marks on the corps as evidence of suicide. The trial's conclusions explicitly mentioned the surgeon's report when the judges exculpated the widow and her children and rehabilitated Jean Calas's memory.⁶⁵

This public success allowed Louis to start a new genre: the "consultations in surgery." It aimed both at firmly establishing principles against the Faculty of Medicine and at evaluating royal officers' medical reports in last resort. The first conflict opposed Louis and Le Bas, also a member of the Académie Royale de Chirurgie, on the issue of late births that had prompted a number of civil procedures. After Louis' treatise published in 1764, which was approved by *conseillers* and members of the Académie Royale de Chirurgie, and by Babaut, the ordinary king's surgeon from the Châtelet of Paris, Jean Le Bas offered several counter-arguments to Louis. He was supported in his claims by a council composed of privileged members of the Faculty of Medicine—the *docteurs-régents*—among which one could find its censor, Le Bègue de Presle, and of physicians of the royal family, as well as members of the Académie de Chirurgie.⁶⁶ Looking for the approval of learned societies, Le Bas presented a strategy based on the traditional hierarchy between physicians and surgeons' guilds. Louis responded with a strictly professional argument, based on the rational discussion of medical texts and legal medical consultations whose legitimacy was grounded on the new royal regulation granted to the surgeons' Académie. After 1765, Louis became special adviser to the Paris Parliament, the main court of appeals in France, for which he wrote numerous consultations, some of which went into print. For

64. Louis, *Mémoire sur une question anatomique*.

65. Cf. Beaumont, *Mémoire* (1762), 12, to be compared with Beaumont, *Mémoire* (1765), 33–7; AN, V4 1478/B, pièces 284, 301 et 303.

66. Louis, *Mémoire contre la légitimité*, 88; Le Bas, *Question*; Id., *Nouvelles observations*.

example, his testimony following prosecutor Joly de Fleury's closing speech of prosecution concerning Abbot Clusel's living was published as well as his consultations for surgeons in the provinces who wished to established the legacy of surgical jurisprudence.⁶⁷ "Surgical consultations," much like legal consultations of lawyers ("*mémoires à consulter*") became a new legal and medical genre.⁶⁸ In short, legal expertise had become an issue for intra-professional conflicts which troubled the quite complex surgical institutions of the second half of the eighteenth-century, contributing to the creation of a new kind of medical text in print.

This competition was less apparent in London, where the guild structuring had nearly disappeared after the splitting between the Compagny of Barbers-surgeons and the College of Surgeons in 1745. However, surgeons in criminal courts could disagree. Even though no trial between 1760 and 1790 can be found which opposed surgeons to physicians of fame,⁶⁹ a few cases confronted two surgeons with contradictory opinions. During the hearing of May 6, 1761 already mentioned, John Finimore charged Thomas Andrews with sodomy. After requiring a constable, he went with him to a surgeon:

Prosecutor [John Finimore]. We went to Mr. Blagden, a surgeon on Snow-hill, he was not at home; we went again the next morning, and I shewed myself to him. He said, Young man, there is a sort of a pile, or some such thing.

Question. How came you to go to Mr. Jones, [another surgeon]?

Prosecutor. I went there as Mr. Blagden did not give me any encouragement, to tell me what it was; I thought proper to go to some other person, so I was recommended to Mr. Jones."⁷⁰

Jones was the first to be heard: surgeon at Saint-Thomas's hospital "for experience," he reported the time span—six years—of his previous experience. He mentioned having observed the lacerated and bleeding

67. For instance, Louis, *Consultation*.

68. See, for instance, Champeaux & Faissole, *Consultation de chirurgie*.

69. Rosenberg, "The Sarah Stout Murder Case."

70. OBP, "Thomas Andrews, Sexual Offences: Sodomy" (May 6, 1761).

rectum, which was probably caused by an object introduced with violence. Blagden was then heard and sworn. The surgeon established that what he had observed might have been caused by piles. At his request, he wished to convince his young colleague. They examined the prosecutor again with his approval. Their opinions happened to converge on the facts—there was an “excavation”—but differed on its possible causes. It have been caused, according to Blagden, by the rubbing of one buttock on the other when walking in warm weather; Jones maintained that Finimore had “surprisingly mended” since his last examination, but some blood was still visible, and to the best of his knowledge, there had been laceration. Indeed the two testimonies differed. The hospital surgeon, whom the prosecutor went to in the end, gave his opinion in last resort, even though he did not differ on the method from his colleague. During the trial of Richard Arnold in October 1776, another surgeon examined Susanna Hart, whose genital parts, according to him, presented no sign of ill-treatment.⁷¹ He then took advice from Mr. Smith, surgeon from Saint-Thomas’s Hospital, who started an examination with the ward’s sister and his assistant. Mr. Smith was heard and confirmed the diagnostic of the local surgeon: “there was not the least inflammation, extension, or laceration; so far from the hand entering, there was scarce room to enter my little finger into her private parts.”

In these two examples, the surgeons shared the same language and diagnostic techniques. They also shared a professional expertise, which was exerted on the bodies of patients or defendants. Courts of justice mirrored the social competence acknowledged to surgeons in emergency situations and, by relying on their expertise, were endowed with surgeons’ privileged access to intimacy. Medical *officers* of the Châtelet went into homes, on the request of the King’s Lieutenant Criminel, where at times they found colleagues.⁷² Indeed, surgeons re-enacted in the courtroom their special access to domestic spaces and bodies or corpses. During the hearing of Thomas Andrews, for instance, the two surgeons could not agree on the clinical signs they had observed: they retired into a private room with the prosecutor for twelve minutes, ta-

71. OBP, “Richard Arnold, Sexual Offences: Rape” (October 16, 1776).

72. See Sawyer, “A Question of Life and Death” in this volume.

king away the evidence of the prosecutor's body from the judge's sight, before pronouncing a second opinion.⁷³

The cases under the surgeons' examination suggest that one might read, on these bodies, the threshold which distinguished the private sphere from public space that Steven Shapin analysed for seventeenth-century experiments.⁷⁴ Indeed, social constraints affect the quality of knowledge: "the threshold acts as a constraint upon the distribution of knowledge, its content, quality, conditions of possession, and justification, even as it forms a resource for stipulating that the knowledge in question really is the thing it is said to be."⁷⁵ In the case of medical practitioners acting on the request of judges, the domestic space is considered as analogous to the body, which they are, alone, allowed to check. This analysis of distribution of knowledge and trustworthiness in expert witnessing or truth-telling is, in part, similar to the distinction of "expert" and "layman" that sociologists of professions have established. In this respect—privileged access to body intimacy and its discourse—the eighteenth-century surgeon could be considered a "magician" in the Weberian sense: "in opposition to the layman, the 'profane' in the magical sense of the word, the magician is the man whose charismatic qualification is permanent;" he can be considered therefore the first professional.⁷⁶ This reading of the surgical occupation through a lens of the sociology of religions helps bridge the twofold witness testimony, at the same time practice of intermediation and public discourse. Surgeons' trespassing into private homes is linked to their body expert examination, which was performed again in the court room; their professional occupation gave a hybrid status, private and public to their knowledge, which could consequently be told before judges.

The specific nature of surgical expert testimony did not prevent confrontations among practitioners, into which the historian may read a social hierarchy. In the case of London, it seems that the opinion of the hospital surgeon prevailed. As the preceding examples show, either the surgeon took advice from the hospital practitioner, or the court heard two surgeons and followed the opinion of the hospital surgeon, who frequently practiced the

73. OBP, "Thomas Andrews, Sexual Offences: Sodomy" (May 6, 1761).

74. Shapin, "The House."

75. *Ibid.*, 375.

76. Weber, *Wirtschaft*, 431.

opening of the corpse when it was prescribed. Their pre-eminence in the profession at the end of the eighteenth century has already been underlined.⁷⁷ It was even inscribed into the urban space. Indeed, one can draw a map of the division of London by hospitals based on the trials where either a hospital surgeon or a civil surgeon, whose residence was known, testified (figure 1). This hierarchy, which characterized the power of hospitals as centers of education and social recognition, remained relatively stable between 1760 and 1790 and did not change before the 1820s, in spite of a few tracts published by the Hunter brothers and the 1787 translation by Samuel Farr, *Elements of Medical Jurisprudence*. The importance of surgical jurisprudence proved crucial once again after 1820, as Thomas Wakley used his famous medical journal, *The Lancet*, to support his campaign for a “medical coronership,” that started from the debated issue of occupational diseases, precisely at a time when medical professions were under discussion in the Parliament.⁷⁸

Paris and London presented contrasting situations as far as legal-medical expertise was concerned especially in the cases of uses of surgical jurisprudence which differed from one place to another. Invasive in Paris, where surgeons participated in the justice and police administrations that ruled the city, it seemed limited to the coroners’ inquests in the British capital.

The comparison however, helps call into question the principles of the surgeons’ judicial authority. The absolutist monarchy of King Louis XIV had institutionalized the legal competence of surgeons at the end of the seventeenth century, in the form of *offices* attached to the Châtelet which directly depended on the Crown. In London, on the contrary, surgeons’ witness testimonies derived from the medical relief of the poor within parishes and the care of vital emergencies, both of which explained their privileged role in criminal justice courts. However, the power the justice courts gave to these professionals seemed quite self-based, despite its clear legal and political framework. Surgeons had reserved for themselves legal expertise in London, where examples of inquisitorial initiatives existed. Moreover, even in the French kingdom which controlled the practice of

77. Lawrence, *Charitable Knowledge*.

78. Havard, *Detection*, 5; Cawthon, “Thomas Wakley.”

legal visit by oath and the creation of a body of officers, the profession kept mastering evaluation procedures. Surgeons defined the forms they had to adopt and defined professional hierarchy as attested to by the advice they took from colleagues.

Legal expertise was indeed a dominant characteristic of the profession's historical definition. In the eighteenth century particularly, the great autonomy enjoyed by the political powers in defining such expertise must be emphasized. In France, internal changes were at work through debates over what could be considered a proper qualification as well as learned disputes which appeared in print. In London, in the absence of a specialized body, the internal dynamics of hierarchy modeled expert testimonies before courts of justice. The surgical jurisprudence derived from a social competence—emergency—but also the appropriation of techniques concerning venereal disease and obstetrics, as surgeons were seen as the best specialists in these medical domains. It equally proceeded from the exercise of an urban territorial power. Such territorial divisions are more difficult to show for the French capital city, where the court had privileged the monopoly of expert officers physicians and surgeons. Nonetheless it was particularly clear in the British capital, organized according to parishes and polarized by hospitals. Thus, one can define what surgical powers—or surgeons' "jurisdiction," as termed by Andrew Abbott—historically meant, based on a compound of knowledge and know-how, social recognition, territorial control and legal empowerment.

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