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The Medico-Legal Autopsy: Medicine, Expertise And Death Investigation

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Abstract: This article sheds important new light on the hybrid space between medicine and law in which medico-legal autopsies are situated. By examining original empirical data obtained during interviews with pathologists, I reveal a web of authority claims both within the profession and in its relationship to law. Drawing on the sociology of medicine, I note the importance of 'expert' status to both the pathologist's identity and their contribution to law. This is constituted via a combination of trained technical skills and tacit knowledge. However, I note the way that these pathologists framed their conclusions as 'opinion'. This, I argue, reflects both the ambiguity inherent in clinical judgement and is a device to limit credibility damaging challenges, especially during legal adjudications. It may therefore be that a gap exists between law's desire for facts and the contribution that these professionals can, and are willing, to contribute toward achieving that end.

INTRODUCTION

In England and Wales, a death must be investigated by a coroner where there is reason to suspect that a) the deceased died a violent or unnatural death, b) the cause of death is unknown, or c) the deceased died while in custody or otherwise in state detention.[1] These sometimes complex and lengthy investigations are important: they can not only contribute to findings of criminal and civil liability, but also to the understanding of how and why a person died. They can also be of wider social and political importance: the bereaved may want answers, the labels assigned to cause of death carry social meaning, the data produced informs the allocation of finite public health resources, and mechanisms to prevent unnecessary future deaths may be invoked. These death investigations are what is commonly referred to as 'medico-legal', meaning that whilst law leads, medicine informs it. One key example of how medicine may shape legal responses to death is in the use of autopsies (a term often used interchangeably with 'postmortems'). However, scant attention has been paid to the hybrid space between law and medicine in which this branch of forensic medicine can be located. This article addresses that gap.

Through my analysis of original empirical data gained from interviews with pathologists who carry out medico-legal autopsies, I evaluate the role played by pathologists in legal death investigations. My data indicates that these pathologists primarily view themselves as experts in their specialist branch of medical science. I argue that this identity, and the contribution that these pathologists make to death investigations, is best understood through the lens of the sociology of medicine, both as a discipline and a profession. In particular, I highlight the importance of the combined qualities which arise from technical skills developed through training and practice[2] and the ability to make intuitive judgements based on specialist knowledge acquired through lived experience (widely referred to as 'tacit knowledge'[3]). Together, these constitute the expert status of the pathologists and justifies their continued role in legal fact-finding processes.

Whilst the pathologists' epistemology may align more broadly with that of modern medicine, I argue that the forensic (that is, legal) context is important. The pathologists are practicing

[1] Coroners and Justice Act 2009, s. 1(2)

[2] I do not use the language of 'trained judgement' here because my emphasis is on combined qualities rather than types of judgement.

[3] M. Polanyi, *The Tacit Dimension*. (1966). I do not use the language of 'trained judgement' here because my emphasis is on combined qualities rather than types of judgement, and my argument is that tacit knowledge is the significant feature in these judgements and expert status.

medicine to inform law, not to treat a living patient. This, I argue, sheds new light on the ways in which legal context, including the legal demand for 'facts', impacts the way that medical knowledge may be constructed. It also exposes a hierarchy between medicine and law which is reflected in the pathologist's deference to – and perhaps even fear of – law. This highlights the individual and professional importance of framing forensic-medical expertise as 'opinion', which serves as a device to simultaneously acknowledge the subjectivity of medical judgements and to limit the ability of external parties to challenge the credibility and authority of the pathologists.

When discussing medico-legal autopsies, there is a danger in conflating what is, in reality, two overlapping systems of legal death investigation. Where a homicide is suspected, a 'forensic autopsy' will be required which, unlike most coronial autopsies, will be carried out by a highly specialised Home Office Registered Forensic Pathologist (HORFP). There is widespread ignorance of the difference between these branches of forensic medicine. I demonstrate that this stratified framework leads to conflicting claims regarding the degree and types of expertise needed to serve legal justice. I argue that this highlights both the significance of how expertise is understood *within* the medical profession, and the importance of the questions asked by a legal process in determining the relevance and value (both qualitatively and financially) of expertise.

The article proceeds as follows: before briefly outlining my methodology, I set out the legal framework for death investigations in England and Wales. This provides essential context to the process within which these pathologists operate. I then move to consider the ways in which these pathologists explained their role, expertise and its limits. In making these arguments, this article extends understanding of the relationship between law and medicine, as well as the role of forensic medicine. Specifically, this is an area of practice which has hitherto been neglected in the academic legal and social science literature, especially when compared to the vast literature on forensic science more generally. I conclude by making the case for further research. Given the social and legal significance of these investigations, this gap needs to be addressed. Put another way, if investigating death matters – and I suggest it does – then there is much to do to ensure that society is not failed by the system which claims to do this on our behalf. A socio-legal lens is essential in meeting that goal.

MEDICO-LEGAL POSTMORTEMS AND DEATH INVESTIGATION

In England and Wales, the majority of postmortems are medico-legal. These stand in contrast to 'consent postmortems', the number of which have declined significantly in response to the various retained organs scandals[4], and the subsequent enactment of the Human Tissue Act 2004.[5] In this section, I explain the legal context in which these postmortems take place. This is important both because it provides a framework for the boundaries between medicine and law but also highlights the importance of different types of legal process (coronial or criminal) being informed.

Before a medico-legal postmortem is required, the coroner must conclude that the death ought to be investigated. The duty to investigate is contained in Section 1(2) of the Coroners and Justice

[4] Department of Health, *Learning from Bristol: The Report of the Public Inquiry into Children's Heart Surgery at the Bristol Royal Infirmary* 1984-1995, Cm 5207(1) (2001); Department of Health, *The Royal Liverpool Children's Inquiry Report*, HC 12-11 (30 January 2001) (Redfern Report) < https://www.gov.uk/government/publications/the-royal-liverpool-childrens-inquiry-report>.

[5] A. Turnbull et al., 'Hospital Autopsy: Endangered or Extinct?' (2015)*68 Journal of Clinical Pathology* at 601-604.

Act 2009. In practice, these deaths can be separated into two categories, which are subject to different investigative processes.

a) *Deaths which are deemed to be suspicious* (that is, where a homicide is suspected). Homicide is a rare occurrence in England and Wales[6], and, whilst the coroner technically retains jurisdiction, suspicious deaths are primarily investigated by the police aided by specialist HORFPs.[7] If homicide is suspected, there will nearly always be a full invasive 'forensic' postmortem. In 2024, these accounted for just 3% of the total number of autopsies conducted (2,234).[8]

b) *Other reportable deaths which the law demands be investigated by a coroner*. It should be noted that the legal definition of an 'unnatural' death[9] does not necessarily mean that any foul play is suspected, for example, a death in hospital from an existing condition but where the admission to hospital originated in a fall in the community would be considered 'unnatural'. In the majority of these cases, any postmortem will be carried out by a hospital histopathologist (or, in the case of a CT scan, a radiologist). These account for roughly 97% of the medico-legal autopsies carried out in England and Wales.[10]

As we can see, despite the greater visibility of criminal investigations, the majority of deaths which are subject to additional medico-legal scrutiny will fall within the ambit of a coronial investigation. Compared to the criminal process, the coronial process has at its disposal both fewer resources and a more limited remit of answering the 'statutory questions' contained within Section 5 of the Coroners and Justice Act 2009. These are: who was the deceased, and how, when and where they met their death. The postmortem might assist in answering any of these questions, but in the majority of cases, the issue to be ascertained is the cause of death – part of the 'how'.

As the 2009 Act Explanatory Notes set out: 'The term 'post-mortem examination' is not defined but it will include any examination made of the deceased including non-invasive examinations, for example, using Magnetic Resonance Imaging (MRI) scans'.[11] To provide context for what this means in practice, the 'Coroner's Statistics 2024' noted that there were 81,185 postmortems in 2024, but that of these, 'there were 14,801 post-mortem examinations conducted using less-

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[6] In the most recent crime year (ending in March 2024), there were 570 victims of homicide recorded in England and Wales. Office for National Statistics, *Homicide in England and Wales: Year ending March 2024* (6 February 2025) <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/homicideinenglandandwales/yearendingmarch2024>.

[7] In suspicious death cases, whilst in practice the police organise and pay for the specialist postmortem, this is still technically under the authority and instruction of the coroner, who, for example, could at any stage demand a different pathologist.

[8] Ministry of Justice, *Coroners Statistics 2024: England and Wales* (8 May 2025) <https://www.gov.uk/government/statistics/coroners-statistics-2024/coroners-statistics-2024-england-and-wales>.

[9] See: A. Harris, "Natural" and "Unnatural" Medical Deaths and Coronial Law: A UK and International Review of the Medical Literature on Natural and Unnatural Death and How It Applies to Medical Death Certification and Reporting Deaths to Coroners: Natural/Unnatural death: A Scientific Review' (2017) 57 *Medicine, Science and the Law* 105. In England and Wales, the leading case is *R (Touche) v Inner North London Coroner* [2001] EWCA Civ 383; [2001] QB 1206.

[10] Ministry of Justice, op. cit., n. 8.

[11] Coroners and Justice Act 2009, Explanatory Notes, ch. 1, para. 136 <https://www.legislation.gov.uk/ukpga/2009/25/notes/contents>.

invasive techniques alongside an autopsy or other invasive intervention, and 8,230 using only less-invasive techniques (such as Computerised Tomography [CT] scans) in 2024'.[12] Thus, there is a continuum of invasiveness which runs from a detailed invasive postmortem (almost always carried out in suspicious death cases) to an external only examination, and everything in between. This can include, but is not limited to, toxicology, use of scans, and staged or limited invasive procedures.

The type of postmortem carried out in a given case will depend not only on the facts of the case, but also on the individual practitioners involved. The coroner has discretion regarding what medical (and other) investigations they deem necessary (and, importantly, are therefore willing to pay for). Whilst there are bountiful guidelines available to assist in making those decisions, these are not binding.[13] Moreover, whilst subject to the overarching authority of the coroner, pathologists themselves are not homogenous in their views regarding the necessary type and extent of postmortem examination, and there may be some back and forth between a pathologist and the coroner regarding which (additional) tests and samples can be taken. There, too, is a geographical lottery regarding the detail of the pre-autopsy information that a pathologist is provided with. For example, a senior coronial pathologist told the Parliamentary Justice Committee that, 'In some areas they are furnished with scene photographs, police statements, statements from coroners' officers and so forth. In other areas you get just two lines written on a piece of A4 saying, "Person found dead in Tesco", or something like that. There is literally that much difference'.[14] These differences of approach introduce further layers of inconsistency within different geographical locations. The issue of variation amongst both legal and medical practitioners is important and complex, but a deep analysis of this is a bigger and substantively different task than that which can be tackled in this article.

Following the postmortem, the pathologist (and/or radiographer)[15] will produce a report for the coroner (and, where relevant, the police) which will detail their findings including, assuming they are able to reach them, conclusions regarding the cause of death and how this ought to be reflected on the death certificate. This will in turn form part of the evidence upon which the coroner (or police) decides how to proceed with, or discontinue, their investigation. A coroner is not obliged to accept the conclusions of the postmortem, but commonly does. Indeed, since the enactment of the 2009 Act, the coronial profession has cemented their identity as a legal one, with the possibility of the appointment of new non-legally trained medical coroners removed.[16] This means that the division between law and medicine is embedded within the statutory framework for coronial death investigation.

Throughout this early stage of the medico-legal death investigation process, we therefore see an emerging picture of a two-track system, each of which is different both in terms of purpose and resource. To be clear, in England and Wales a distinction is drawn between 'forensic'

[12] Ministry of Justice, op. cit., n. 8.
[13] Courts and Tribunals Judiciary, *Chief Coroner's Guidance, Advice and Law Sheets* (2025) <https://www.judiciary.uk/courts-and-tribunals/coroners-courts/coroners-legislation-guidance-and-advice/coroners-guidance/> . The huge variety of approaches to types of PM can be seen in the annual Coroners Statistics here: Ministry of Justice, op. cit., n.8. .
[14] Justice Committee, *Oral Evidence: The Coroner Service*, HC 282 (House of Commons, 8 September 2020) 9 (Dr Mike Osbourne) <https://committees.parliament.uk/oralevidence/1092/pdf/>.
[15] N. Davendralingam et al., 'Post-mortem CT service structures in non-suspicious death investigations' (2024) 6 *BJR*
[16] Coroners and Justice Act 2009, Sch 3, Pt 2.

postmortems in suspicious death cases, and 'coronial' postmortems in others. Both are 'forensic' in the wider sense of the term – these are jurisdictional terms of art to describe different investigative processes. Whatever the language, all medico-legal autopsies are a form of forensic medicine. Medical expertise via postmortem examinations is utilised by legal officials to inform how they proceed with their investigations. This includes playing a crucial role in what Timmermans terms 'death brokering' – meaning determining what labels we apply to deaths.[17] It is important to recognise this wider function because, although not my focus here, law does not exist in a vacuum or without social function. The labels tell a story of death in a social context – determining not only what circumstances are suspicious but also directing other social and political consequences. This is because official labels create data which informs decisions about health and social research, as well as resource allocation.[18]

METHODS

This article draws on data from two qualitative studies carried out to examine the values, attitudes and practices of the pathologists and Anatomical Pathology Technologists (APTs) who carry out or assist with medico-legal autopsies. The first of these, conducted in 2016, involved semi-structured interviews with 11 HORFPs. This represented just under a third of the cohort. As noted above, this elite group are responsible for carrying out highly specialised postmortem examinations and associated work in cases of suspected homicide.[19] The purpose of the study was to understand how these practitioners perceived their role in death investigations. In the interviews, there were three key themes: the perceived status of the dead and the interests of other parties such as the bereaved, religious communities and legal officials, their identity and role in legal decision-making, and any concerns they had about the death investigation system. Whilst the HORFPs were prompted to discuss these areas, interviewees were also given space to draw on their own experiences and to direct the discussion towards other issues and themes that they considered important.

Second, between 2019 and 2023, I carried out semi-structured interviews with 24 coronial pathologists (I use the abbreviation 'CorPath' to identify these individuals in the quotes throughout this paper). I also interviewed 25 APTs who assist pathologists and take responsibility for the deceased body (including its reconstruction) before and after the autopsy.[20] The purpose of these interviews was to understand the practices and views of these professionals, both independently and in comparison with the HORFPs. In particular, the interviews were framed against concerns raised by HORFPs regarding the quality of the coronial autopsy service (something I discuss below). The themes and structure mapped onto those used in the interviews with the HORFPs, adapted for the different service and roles. As before, the interviewees were given considerable scope to direct the interview by reference to their own priorities and experiences.

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[17] S. Timmermans, 'Death brokering: constructing culturally appropriate deaths' (2005) 27 *Sociology of Health & Illness* 993.

[18] Office for National Statistics, 'Mortality Statistics in England and Wales QMI' (2024) <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/deaths/methodologies/mortalitystatisticsinenglandandwalesqmi>.

[19] This is not to say that they do not do any other work, including second postmortems, the interpretation of injuries on the living, and, in some cases coronial work.

[20] The interviews with APTs do not form a significant part of the data drawn upon in this piece.

Written consent to the recording and use of the data was provided by each participant. The interviews, which lasted an average of an hour, were recorded and transcribed. The data was anonymised and loaded into qualitative data analysis software, NVivo.[21] Interviews were coded using grounded theory to identify themes and practices of interest.

Data from these interviews is drawn upon to demonstrate the perspective of both forensic and coronial pathologists. The data is not generalisable and reports only the practice of those practitioners that I interviewed. Nevertheless, it provides a deep insight into their views and can be substantiated, to some extent, by reference to official reports and other data. Where this is the case, these links are highlighted throughout. Importantly, the data is sufficiently detailed and rich to provide useful indications of both current practice and issues, as well as to direct priorities for future research.

MEDICINE, SCIENCE AND THE SIGNIFICANCE OF LEGAL EVIDENCE

In this section, I locate my argument within the sociology of the medicine and its professional status. I highlight the importance of judgement in both the enactment and authority of modern medicine, including pathology. This underpins the ways in which the pathologists I spoke to simultaneously asserted essential expertise and its boundaries. We will see that this limits the truth claims that can be made and emphasises instead the formation of expert *opinion* based on available evidence. I suggest that whilst this protects the interests of the pathologists, it may not meet with the demands or expectations of law.

1) Medical science and the importance of judgement

Carpenter and Tait have argued that much of the development and role of modern medicine, and internal autopsies in particular, can be traced back to 'modernity' and the enlightenment period in the 17th century. They argue that the 'notion of objectivity forms one of the central pillars within the logic of modernity, and the new forms of expertise that developed within it have succeeded, in large part, because of the status of the truth claims they produce'.[22] This led to an alignment of medicine with science, which was helpful because if a discipline was considered to be applying the 'fair, rigorous and controlled' scientific method, this provided the basis for its epistemic authority.[23]

Anatomy, including the dissection of corpses, was one part of this reformulation of medicine, resting on the belief that 'it is at death that disease and life speak their truth'.[24] The conviction that disease could be best understood via the systematic analysis of the deceased body meant that postmortem examination began to dominate medical research methods.[25] It was thought

[21] [reference removed to preserve anonymity]
[22] B. Carpenter and G. Tait, 'The Autopsy Imperative: Medicine, Law, and the Coronial Investigation' (2010) 31 *Journal of Medical Humanities* 205, at 205.
[23] P. Feyerabend, *Realism, Rationalism and Scientific Method* (1981) 48; G. Tait et al., 'Policing Expert Testimony in a Death Investigation: Medical Opinion as Legal Fact' (Paper presented at the 3rd International Crime, Justice and Social Democracy Conference, Brisbane 2015), at 8 <https://eprints.qut.edu.au/93057/21/93057.pdf>.
[24] M. Foucault, *The Birth of the Clinic: An Archaeology of Medical Knowledge* (1973) 145. For a detailed history of the development of anatomy, see 'the anatomist anatomised'; A Cunningham, *The Anatomist Anatomis'd* (2016).
[25] L. Hart and S. Timmermans, 'Death Signals Life: A Semiotics of the Corpse' in *Routledge Handbook of Body Studies,* ed. B. Turner (2013) 232.

that lifetime symptoms and cause of death could be decoded and understood by viewing the body as akin to a machine that could be the subject of scientific analysis.[26] Lawrence has shown that by the 1920s, technical expertise and intervention informed by laboratory tests were admired as the markers of modern medicine.[27] This positioned anatomy as the hallmark of medical education.[28] To be clear, in modern medicine, the study of anatomy is commonly associated with education, but modern medico-legal autopsies rely on the combined skills of pathologists to understand anatomy, be skilled in dissection and to carry out microscopic analysis of tissue.[29]

Whilst the alignment of anatomy, medicine and science is important in the widespread social and political acceptance of medical authority and the professional status of doctors, the history of medicine is more nuanced than this. I follow Wailoo in arguing that whilst science may have 'underwritten' the credibility and cultural authority of modern medicine,[30] the work of medical historians[31] exposes a dynamic and sometimes difficult relationship between science and the medical profession.[32] They are not, in short, the same thing. Medicine, unlike so-called objective science, involves dealing with individuals and making treatment decisions based on a range of information, including history and the patient's own experiences and perceptions. As Freidson argued, 'Medicine is not merely neutral, like theoretical physics. As applied work it is either deliberately amoral ... or it is itself actively moral by its selective intervention.'[33] Diagnoses, whether of disease in the living or of cause of death, are probabilistic determinations based on all of the information available and in light of the practitioner's expertise, experience and judgement.[34] Thus, medicine is now widely accepted to be an interpretive activity, 'adjusting scientific abstractions to the individual case'.[35] This is also widely referred to as 'clinical reasoning'.[36]

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[26] S. Timmermans, *Postmortem: How Medical Examiners Explain Suspicious Deaths* (2006) 11. For clarity, I am not claiming that science itself is value neutral, but that is not my focus here. For discussion of the social and historical constructions of science see for example, B. Barnes, D. Bloor, and J. Henry, *Scientific Knowledge: A Sociological Analysis* (1996) and G. Edmond, 'Law, Science and Narrative: Helping the "Facts" to Speak for Themselves', (1999) 23 *Southern Illinois University Law Journal* 555.

[27] C. Lawrence, *Medicine in the Making of Modern Britain, 1700–1920* (1994) 16.

[28] id., pp. 59 – 60.

[29] Materials may also be sent for other kinds of laboratory testing for example, toxicology.

[30] K. Wailoo, 'Sovereignty and Science: Revisiting the Role of Science in the Construction and Erosion of Medical Dominance.' (2004) 29 *Journal of Health Politics, Policy and Law* 643; M. S. Larson, *The Rise of Professionalism: Professionals and the Monopoly of Expertise* (1997) 26.

[31] For example, J. H. Warner, 'Science in Medicine' in *Historical Writing on American Science: Perspectives and Prospects*, ed. S. Kohlstedt and Mossiter (1985) 35-58. P. Pauly, *Controlling Life: Jacques Loeb and the Engineering Ideal in Biology* (1987).

[32] Note that Collyer highlights how medical practice is characterised by widespread uncertainty and disorder See: M. Calnan, 'Eliot Freidson: Sociological Narratives of Professionalism and Modern Medicine' in *The Palgrave Handbook of Social Theory in Health Illness and Medicine* ed. F. Collyer (2015) 292; Larson, op. cit., n. 30, p.25.

[33] E. Freidson, *The Profession of Medicine* (1975) 346

[34] C. Miller and D. Miller, 'Medicine Is Not Science' (2014) 2 *European Journal for Person Centered Healthcare* at 144; K. Montgomery, *How Doctors Think: Clinical Judgement and the Practice of Medicine* (2005); L. King, *Medical Thinking* (1982) pp. 250 - 272, 294 – 297. Indeed, King argues that certainty in medicine is problematic. Note some argue that all science is socially constructed, but this is not the place for that argument: see H. M. Collins, 'The Sociology of Scientific Knowledge' (1983) 9 *Annual Review of Sociology* at 268 – 277; Edmond, op. cit., n.26, pp. 555 – 557.

[35] K. M. Hunter, *Doctors' Stories: The Narrative Structure of Medical Knowledge*. (1991) 18; M. Traynor, 'Indeterminacy and technicality revisited: how medicine and nursing have responded to the evidence based movement' (2009) 31 *Sociology of Health and Illness* 494.

[36] Montgomery, op. cit., n. 34, p.16.

I draw upon the sociology of medicine, and the authority that is derived from professional status, to analyse the ways in which these pathologists explained their identity and role. My purpose here is not to chart the role of professionalisation in modern pathology, or to critique the values that drive the medical profession and its funding.[37] Rather, I highlight the importance of the pathologist's ability to contribute *expertise* in constructing authority in medico-legal death investigations. As I outlined in my introduction, this expert status is comprised of a combination of technical skills and tacit knowledge, both of which were considered necessary for making judgements regarding cause and circumstances of death. This specific combination is believed to be inaccessible to those lacking the required training and, importantly, lived experience. This means that the contribution made by the pathologists cannot be standardised or replicated by others who lack these qualities.

This exercise of judgement based, at least in part, on tacit knowledge is central to understandings of modern medicine as a profession, within which the work of pathologists is located.[38] I therefore follow Larson's argument that, '[P]rofessions are occupations with special power and prestige. Society grants [them] these rewards because [they] have special competence in esoteric bodies of knowledge linked to central needs and values of the social system.'[39] Importantly, as Freidson argued, this expertise is not purely technical, but is embedded and negotiated within social, political and institutional contexts.[40] This is especially pertinent here because by emphasising these qualities, pathologists (as part of the medical profession) are able to exclude those who are external to their profession from constructing their field or its public value.[41] We will see that in addition to following accepted processes and methods linked to formal training, the use of professional judgement is central to the way in which these pathologists both reach their decisions and assert authority.

Pathology is arguably different to much of medicine because it sits in a space between biomedical science and clinical work; forensic pathology is different again because once qualified there is very little clinical work done by HORFPs. Pathology relates to the study of disease processes. The Royal College of Pathologists (RCPath) claims that pathology 'is the bridge between science and medicine…' which '…underpins every aspect of patient care, from diagnostic testing and treatment advice to using cutting-edge genetic technologies and preventing disease.'[42] A HORFP explained this to me: 'I read that to be the position pathologists hold of being based within laboratories, and involved in research, as well as being medically

[37] In particular, I note the importance of autonomy and power in this status, but this is not my focus here. On this see C. L. Bosk, 'Review Essay: Avoiding Conventional Understandings: The Enduring Legacy of Eliot Freidson' (2006) 28 *Sociology of Health and Illness*. 637; E. Freidson, *Professionalism: The Third Logic* (2001); M. S. Larson, 'Professionalism: The Third Logic (Review)' (2003) 46 *Perspectives in Biology and Medicine* 461. Note in particular the role of capitalism, markets and how professional status is used, S. Harrison and C. Pollitt, *Controlling Health Professionals; the Future of Work and Organisation in the NHS* (1994).

[38] See Freidson, op. cit., n.33.

[39] Larson, op. cit., n.30.

[40] Freidson, op. cit., n. 37.

[41] Larson, op. cit., n. 30, p.25

[42] Royal College of Pathologists, 'What is Pathology?' (2024) <https://www.rcpath.org/discover-pathology/what-is-pathology.html>.

trained.'[43] The potential credibility boost that is associated with scientific method[44] is evident in the way the pathologists describe their expertise.[45]

The majority of pathologists carrying out autopsy work do so only as a small, usually additional/non-NHS aspect of their primary role, which is focusses on prolonging life.[46] Their understanding of death, therefore, at least initially, comes from their engagement with disease amongst the living. In reality, pathologists who carry out autopsies will often share greater corporal contact with the dead than they do with their living patients; their diagnostic work with the living is almost entirely lab-based and/or microscopy-based, whilst samples taken from the dead may be taken for analysis, the actual body must be engaged with. This also makes the majority of their practice different from (the majority of) doctors practicing clinical medicine, whose primary role involves the active engagement with, and treatment of, living patients. This difference of focus does not, however, undermine focus on patient interests. For autopsy work, in addition to serving the interests of the law and the bereaved, this commonly manifests in the assertion that the doctors are acting in the interests of the deceased by giving them a voice and advocating for them.[47]

In the discussion of my interview data which follows, I demonstrate that the claims of the pathologists, and within that their medico-legal work, can be aligned with the wider claims of medicine as a profession deserving of authority. This frames the contribution that can be, and is, made by these pathologists.

2) (Forensic) pathology and the importance of expertise

Forensic medicine describes medicine that interacts with legal processes. This is a much broader field than forensic pathology, which is a distinct sub-specialism. Both however are 'hybrid', co-producing[48] knowledge across these arenas. Legal investigations, and the forensic evidence produced to inform them, share a focus on individual fact specific cases. The applicable rules and procedures depend on circumstances; they aim to assign pre-determined and legally accepted labels as outcomes. This shares many commonalities with the practice of clinical medicine, albeit with the labels and processes being dictated at least in part by law. It also marks a clear overlap between different disciplines within forensic science. As Cole has argued, forensic scientists do not seek to make general knowledge claims but rather they draw on a limited dataset, within a timeframe and a specific case.[49] Therefore, just as medical science is not the same as 'hard' science, Roberts argues that 'forensic science is not Science'.[50] In

[43] Confidential email exchange, 6 September 2024.
[44] Calnan op. cit., n. 32, p.292.
[45] For a history of how we got here in Britain, see Lawrence op. cit., n.27.
[46] Whilst it is not my focus here, arguably the marketisation of medico-legal work is likely to contribute to claims to, and importance of, professional status. See Freidson, op. cit., n.37.
[47] I Jones, (2018) It's all about justice': Bodies, Balancing Competing Interests and Suspicious Deaths. (2018) *J. of Law and Society*. 45, at 563-588; M Bloor, On the Conceptualisation of Routine Medical Decision-Making: Death Certification as an Habitual Activity in *Qualitative Studies in Health and Medicine*, ed. M. Bloor and P. Taraborrelli (1994) 96-108.
[48] A term borrowed from G. Rees, 'The coproduction work of healthcare professionals in police custody: destabilising the care-custody paradox' (2022) 33 *Policing and Society* 51, at 51–63.
[49] S. Cole, 'Forensic Culture as Epistemic Culture: The Sociology of Forensic Science' (2013) 44 *Studies in History and Philosophy of Science Part C: Studies in History and Philosophy of Biological and Biomedical Sciences at* 36, 39.
[50] P. Roberts, 'Renegotiating forensic cultures: Between law, science and criminal justice' (2013) 44 *Studies in History and Philosophy of Biological and Biomedical Sciences* 47, at 48.

forensic medicine the conclusions reached are contingent not only on the interpretation of physical evidence (that is, the body and samples from it) but also on social and reported histories (usually provided by legal officials). To reach their conclusions, tacit knowledge and subjective judgement must play an important role.

In the following quotes, I demonstrate how the pathologists I spoke to balance the various demands placed on them in a medico-legal death investigation. I argue that their medical expertise is concurrently advanced as a branch of science, whilst recognising that their contribution to the legal process (and perhaps medical practice more generally) takes the form of expert opinion. I suggest that 'opinion' is doing two kinds of work here. First, it is a way of recognising the importance of subjective judgment in their methods and conclusions. Later I argue that 'opinion' is a device used to limit responsibility for outcomes via boundary work.

Demonstrating the value of traditional conceptions of science, HORFP 7 told me:

From my point of view the overriding role is to be there as an objective and scientifically rigorous … certainly to have that mind-set of objective opinion for initially the police and the coroner and subsequently to courts.

CorPath 22 was more subtle, locating science within the reality of medicine:

'… the mechanism by which we're investigating the cause of death, how they died, is using our scientific method…I like the scientific application of knowledge to a clinical situation'.

These investigations also involve time and resource constraints, meaning that in addition to justifying conclusions, pathologists must use judgement to make choices. Take for example how HORFP 2 described conducting a full Home Office forensic autopsy:

I'm trying to answer questions and it's a balance, because a forensic autopsy, there's an almost infinite number of things you can look at and photograph and take samples of.

This use of judgement is not particular to pathology or autopsy work. Rather, as with much medical practice, as the pathologists become more experienced – and competent - at making decisions in the face of clinical ambiguity, they develop confidence in their expertise and practice 'medical judgment'.[51] Thus, they rely on tacit knowledge to make choices and decisions, and to assert the authority to make those decisions over others.

In the following quote, CorPath 24 emphasises the importance of clinical experience over academic knowledge, and with that the limitations of knowledge gained through training alone. This is important for the pathologist's authority as it asserts that their expertise is not replicable. This enables them to simultaneously mark out their claim of authority and define its limits.

… It's an opinion, it's not an exact science … there are lots of things that we interpret and draw conclusions from that are you know, it's, kind of, not in a textbook, it's not necessarily written down where you will go with a trainee, "Well, I did that because …" but we try and teach them that there are things that they need to think about wider than just if you see this, it's always this, because quite a lot of the cases, the signs are quite soft, there's no hard and fast indication about

[51] See, in the context of orthopaedic surgeons, K. Knafl and G. Burkett, Professional socialization in a surgical specialty: Acquiring medical judgment. (1975) 9 *Soc Sci Med (1967)* 397.

what the death's caused by, but, you know, it's natural, you've excluded all the other potential causes.

In reality, autopsies can never produce an objective, replicable, 'truth'. Rather, the autopsy is a 'social' process involving the selection of information and the exchange of ideas. As such, whilst a cause of death may be offered, and a report provided which explains this, medical evidence informing the legal process at whatever stage will always be described in terms of probabilities. The pathologists use a personal and professional moral lens in reaching their conclusions,[52] which are in turn constituted by both technical and tacit knowledge.

Moreover, the knowledge the pathologists seek is determined not by objective and value neutral methods but rather by questions outside of their control or design. They may draw on generalisable 'science' in interpreting their data, but in doing so they construct a new, purposeful form of knowledge in each legal case. This reflects the distinction that King draws between empirical and scientific medicine, arguing that scientific medicine is defined by 'critical judgement and causal reasoning' rather than mechanical reasoning.[53] In the specific context of a medico-legal autopsy, Leadbeatter and James aptly describe findings as at best a 'pragmatic compromise', hopefully achieving the closest approximation to an accurate cause of death.[54] This can be seen in the way that CorPath 18 explained the implications of subjective interpretation for evidential outcomes:

... a hundred pathologists doing the same postmortem would probably get to 50 different causes of death, because often they're not aneurysms, they're not this, they're not that. And people, we word things slightly differently for different patients.[55]

Assuming that postmortem findings are so variable, and in terms of constructing and maintaining their professional authority, pathologists must tread a careful line between the limits of the claims that can be made and the need to maintain sufficient authority for their expertise to be valued by the legal process. This aligns with Jamous and Peloille's view that doctors face a 'dilemma' whereby professionals emphasise high levels of indeterminacy (that is the importance of tacit judgement) relative to technical skill, whilst being mindful that to over emphasise this would be to risk others claiming equal skill.[56]

This blending of skills, and framing of their contribution, is not unique to England and Wales. For example, in his analysis of Medical Examiners in the USA, Timmermans found the coexistence of a positivistic framework for finding cause of death (understood as the application of correct scientific method to the body and in interpreting evidence (including that provided by legal officials)) whilst simultaneously designating the pathologist's conclusions as opinions rather

[52] M. Kramer, *Moral Realism as a Moral Doctrine* (2009).
[53] L. King, op. cit., n. 34, p.272, 295. Recall that mechanical reasoning or objectivity refers to the process of trying to remove human interpretation from the practice of science.
[54] S. Leadbeatter and R. James, 'How can we ensure that the coroner's autopsy is not an invasion of human rights?' (2017) 71(1) *J Clin Pathol* at 3; [reference removed to preserve anonymity]
[55] This does not mean that there is no significant element of routinisation (or 'habitus') in the conclusions reached, especially given that it is a relatively small number of individuals who engage in ascertaining cause of death from autopsies. On this, see M. Bloor, (1991) 'A minor office; the variable and socially constructed character of death certification in a Scottish city' (1991) 32 *J. of Health and Social Behaviour*. 273; L. King 'What is Disease?' (1954) 21 *Philosophy of Science*. 193.
[56] H. Jamous, and B. Peloille, 'Professions or self-perpetuating system; changes in the French university-hospital system' in *Professions and Professionalisation*, ed. J. Jackson (1970).

than facts.[57] This leads to the second aspect of the work being done by opinion. That is, it lowers the chance of pathologists, both individually and as a professional group, being criticised for the 'wrong' finding, whilst also, albeit tolerably, limiting the contribution they can make to the legal process. This is reflected in Rutty's argument (who at the time of writing was a leading HORFP): 'The pathologist does not give a verdict in relation to the death (for example, suicide), but rather this is left to the coroner, who also does not have to accept the proposed medical cause of death. It is, after all, an opinion.'[58]

3) Law's demand for science

We have seen that both HORFPs and CorPaths construct their profession and its contribution to legal death investigation by reference to their ability to offer expert opinions, defined as such because of their exclusive skill set. Yet expertise is also advanced with the caveat of 'opinion'. I have argued that opinion is a device used by these pathologists to acknowledge that interpretation and subjective judgement underpins their conclusions. Subjectivity via tacit knowledge is essential to authority and role because it protects access to external parties, but it also raises the danger of limiting the meaningful contribution that can be made to legal death investigations.[59] Nevertheless, as Hart and Timmermans argue, 'there is one niche where the corpse and the autopsy reign as the most authoritative source of knowledge: forensic medicine'.[60] Given the limitations of autopsy medicine, it might be asked why medicine retains an important role in death investigation.

I would argue that reliance on expert evidence is central to law's own claim to authority,[61] supporting law's requirement for facts and objectivity.[62] Death investigation is no exception to this: indeed, Burney's historical analysis of the English inquest process identifies the importance of the concept of expertise in the development of the modern coronial system.[63] It also reflects the broader historical shift outlined above towards reliance on governance via reason, even if these claims are not reflected in the reality of clinical medicine (or law). This means that to remain relevant, pathologists must frame their contribution in such a way as to meet the demands of the legal processes being served. Edmond argues that the perceived preference of legal actors such as judges (including coroners) for 'facts' and neutrality places pressure on experts appearing in legal settings to align their findings with conventional images of science, and in doing so emphasise what is often referred to as 'mechanical objectivity'.[64] This concept, developed by Daston and Galison in their influential account of the history of science, describes attempts by scientists to be 'objective', often using machines and instruments in an attempt to produce knowledge with as little involvement of human judgement as is possible.[65] As Haack has

[57] Timmermans, op. cit., n. 26, pp.20-21.
[58] G. Rutty, 'Who audits the autopsy' (2006) 2 *Forensic Sci Med Pathol* 71, at 71.
[59] Rees finds that this is a consequence of the boundary work done by Forensic Medical Examiners (FMEs) in his work: G. Rees, 'It is Not for Me to Say Whether Consent Was Given or Not': Forensic Medical Examiners' Construction of 'Neutral Reports' in Rape Cases. (2010) 19 *Social & Legal Studies* 371.
[60] Timmermans, op. cit., n.26, p.234.
[61] On the broader role of expertise in a liberal democracy, S. P. Turner, *Liberal democracy 3.0: Civil society in an age of experts* (2003).
[62] G. Rees, '"Morphology is a witness which doesn't lie": Diagnosis by similarity relation and analogical inference in clinical forensic medicine' (2011) 73 *Social Science & Medicine* 866.
[63] M. Burney, *Bodies of Evidence: Medicine and the Politics of the English Inquest, 1830–1926* (2000).
[64] G. Edmond, op. cit., n.26, pp. 560 – 563; L. Daston and P. Galison, *Objectivity*. (2007).
[65] Daston and Galison, id.

argued, there can be a tendency to '… ask, not "is there any good evidence for that?" but "is there any scientific evidence for that?"'[66].

Carpenter and Tait have argued that when comparing the medical and legal elements of Australian (coronial) death investigation, the medical aspect appears to be 'less open to interpretation and more scientifically supportable because it is grounded in a belief in the objective fact-finding nature of scientific investigation'.[67] This reflects a wider belief that, in non-suspicious cases at least, deaths can be explained in terms of natural diseases which can be located in human anatomy and physiology.[68] In contrast, legal investigation is viewed as largely reliant upon the subjective opinions of family and friends, as well as the circumstantial evidence gathered at the scene, which may include a suicide note, empty packets of medication, or knowledge that the house was secure.[69] They argued that in Australia this has resulted in an 'autopsy imperative',[70] which has led coroners to place undue reliance on autopsies. This was also reflected in Timmermans' ethnography of a medical examiner's office in the USA, where he concluded that autopsies were 'credited with revealing a scientifically true cause-of-death'.[71] This may also map onto public perceptions of what it is for medicine to be 'scientific',[72] but it does not align with reality or the experiences of the pathologists. Rather, if we accept that all facts presented in legal processes are the result of interpretation and judgement, each developed in response to subjective experience, values and context, then there is potential for misalignment between the demands of law and the strength of claims that can be made by medical science. This is reflected in King's apt observation that 'When in court we swear to tell the truth, the whole truth, and nothing but the truth, we have uttered an impressive-sounding phrase but one that is really nonsense.'[73]

Some investigations will culminate in a court hearing – whether that be a criminal trial or an inquest, and in that context, the pathologist may be an expert witness. This is increasingly less common at inquests, where there is greater reliance on documentary evidence, but even in criminal trials, I found scepticism amongst HORFPs regarding the value of their presence.[74] This underscored the importance of the label of 'expert' to both the social acceptability of legal processes (including outcomes) and to the continued role of forensic pathology as evidence.

HORFP 3*: Barristers of those days really attacked you, today you walk in, they say 'You're an expert', everyone agrees you're expert, they're not going to argue with your qualifications, you give an opinion, and more often than not they say 'No questions' and you walk out. Now, whether that's*

[66]S. Haack, 'Six Signs of Scientism' (2012) 3 *Logos & Episteme* 75.
[67] Carpenter and Tait, op. cit., n. 22, p. 210. The Criminal Practice Directions also push towards joint reports.
[68] See L. Prior and M. Bloor, 'Why people die: Social representations of death and its causes' (1993) 3 *Science as Culture* 346, at 358-371.
[69] Carpenter and Tait, op. cit., n. 22, p. 210.
[70] id.
[71] L. Hart and S Timmermans, op. cit., n. 25, p. 234. It has been suggested that judges are a friendly audience for forensic science, as they understand it as bolstering law and it is considered useful for case construction, for example, B. Carpenter and G. Tait, op. cit., n. 22.
[72] King, op. cit., n. 34, p. 296.
[73] id., p. 314.
[74] Inquests are, putatively at least, a judge led 'inquisitorial' process. This process can rely on various forms of evidence, including oral evidence, but often places a greater emphasis on documentary evidence. The fact that pathologists are rarely required to attend court was confirmed by all coronial pathologists that I spoke with.

because they know you, and they know what you're going to say, but it has changed in the 20 years that I've been in practice.

Yet, if the weight that legal decision makers wish to place on the pathologist's evidence (that is, their opinion) is perceived by the pathologist as too great, they are keen to either relate their evidence to what is perceived to be more reliable sources (such as 'science') or to limit the extent to which they can be held responsible for legal outcomes based on it. For example, HORFP 6 told me that:

One should be able to substantiate by reference to source materials in order to prove it, and if there is doubt, you say, 'There is doubt, and these are the ways in which you might address that doubt,' because there is too much emphasis on expertise in both civil and criminal courts.

HORFP 5 was even clearer, telling me:

I'm very comfortable in stepping back and saying 'To be honest, I'm only a pathologist. I can tell you the pathology but I can't comment on that other question you've just asked.'

HORFPs receive specialist training, exposure to adversarial courtroom environments (such as those found in criminal justice) and work closely with legal officials in their investigations, but they still do not wish to assume responsibility for morally and socially loaded legal outcomes. Furthermore, they are alert to the potential for the adversarial context to create a hostile atmosphere in which credibility is challenged. The formal legal environment is less familiar to CorPaths, and thus that environment is likely to have an even greater muting impact on them. A common sentiment is reflected in the words of CorPath 14, who told me that that being challenged in court is a '*fear*' which is '*definitely there all the time*'.

Drawing limits around what the pathologist is willing to claim is an example of 'epistemological modesty'[75], which could protect them from credibility-damaging allegations that they have contributed to legal errors. This is reminiscent of the work of Mulla and Rees, who have identified the boundary work done by forensic medical practitioners in the context of sexual assaults. For example, Rees demonstrates that forensic medical examiners in Scotland produce what he terms to be 'neutral reports', which serve to limit claim making to only those matters they deem to be within their medical expertise, protecting their credibility in the face of adversarial challenge.[76] Detailed exploration of this important new example of boundary work at the intersection of law and medicine is a substantively different task to the topic discussed here,[77] however, I would argue that the drawing of boundaries in these ways indicates boundary work which asserts identity (pathologists, like Forensic Medical Examiners, contribute medical expertise and do not reach legal conclusions) and authority, whilst also protecting both the individual and profession from potentially damaging public challenge.

[75] Cole, op. cit., n. 49, p. 42.
[76] G. Rees, '"It is Not for Me to Say Whether Consent Was Given or Not": Forensic Medical Examiners' Construction of 'Neutral Reports' in Rape Cases', at 374 – 376. Note also Gieryn's important work on credibility and science, and how it allows knowledge claims to be constructed: T. F. Gieryn, *Cultural Boundaries of Science: Credibility on the Line*. (1999).
[77] This includes the boundary work done between disciplines, both within forensic science and between law and all forms of science. Further research is needed in this area, see: Edmond, op. cit., n.26, p. 569.

It is possible that even if the pathologists frame their findings with caveats, other actors in the process may translate them, consciously or otherwise, into much more. The requirement that coroners be legally trained means that even though they do not have to, they may be likely to defer to medical expertise on medical questions. If a coroner, police officer, lawyer or indeed juror, thinks that a pathologist is able to provide an unambiguous statement of the cause of death, then the pathologist's expert evidence is, in practice, transformed into legal fact.[78] Whilst, at the end of an inquest, coroners[79] will make a public 'finding of fact' together with their conclusion, these are not commonly extensive.[80] They will give reasons for these conclusions, but these relate to the basis for their legal conclusions rather than to an analysis of the evidence per se. In a criminal trial, where suspicious deaths are adjudicated upon, juries do not give reasons, and as such we can only theorise about the basis for these, although we should note that the evidence they hear, how and when, will be determined by the lawyers.[81] It also, of course, reflects the realities of adversarial methods which, especially in the context of a jury trial for a criminal offence, are designed to draw on, and develop, emotional responses from decision maker to make a 'side's' version of events more compelling.[82] Further, adversarialism is, in theory at least, designed to expose the frailty of any fact claims, pushing experts to acknowledge the centrality of interpretation in their methods.[83] It is here, then, that we come full circle, for, as Latour argues, if 'scientific evidence' is sought, constructed in a particular image and relied upon in a legal process, then it is the law, not science or medicine, which is seeking an arguably impossible statement of truth. This, in turn, provides the groundwork for law's authority claims.[84]

Whilst we do not currently have access to qualitative data regarding the motivations of legal actors in England and Wales, we do know that in 2024, nationally, some kind of postmortem examination was ordered in 46% of cases referred to coroners. This suggests that postmortems are considered to be an important form of gaining evidence to inform a death investigation in a significant minority of cases. Whether this is because of a belief in autopsies representing a form of science, because they are seen by lawyers as providing a useful, expert-informed, part of the investigation, or a combination of these, remains in need of further research. For the time being, it is clear that an important function of medico-legal autopsies is to inform the direction of the investigations into the dead, whether that be those carried out by the police, coroners, or indeed a suspicious death being passed back to the coroner by the police after homicide is ruled out. The autopsy is just one element of that, and takes place alongside other investigatory processes including, depending on the case, other forensic science, medical history and witness accounts.

RELATIVE EXPERTISE, MISSED HOMICIDES AND PURPOSE

In this section, I expose a conflicting understanding between HORFPs and CorPaths of what it is to be an expert in medico-legal autopsy practice. This is the context for the contentious topic

[78] K. Kramar (2006) 'Coroners' interested advocacy: Understanding wrongful accusations and convictions' (2006) 48 *Canadian Journal of Criminology and Criminal Justice* 803, at 818.
[79] Or, where relevant, a jury: see the Coroners and Justice Act 2009, s.7 for the circumstances where these are required.
[80] Although they may be in complex cases.
[81] On the impact of this see, for example, L. Brandon Garrett and G. Mitchell, 'Forensics and Fallibility: Comparing the Views of Lawyers and Jurors' (2016) 119 *West Virginia Law Review* 621.
[82] J. H. Langbein, *The Origins of the Adversary Criminal Trial* (2003). Caudill and LaRue are critical of this, arguing that law should adopt a 'non-romantic view' of science. D. Caudill and L. LaRue *No Magic Wand: The Idealization of Science in Law* (2006) 87.
[83] R. Smith and B. Wynne, *Expert Evidence: Interpretating Science in the Law* (1989) 28, 31.
[84] B. Latour, *The Making of Law: An Ethnography of the Cousiel d'Etat* (2010).

which prompted the second study: the quality of coronial autopsies. I argue that this disagreement highlights both the significance of how expertise is understood within medicine, and the importance of the questions asked by a legal process in determining the perceived value of expertise.

When I made my case for the funding of the second project (on coronial autopsies), this was in large part based on the strength of feeling amongst the HORFPs that coronial autopsies were inadequate. Shortly before I interviewed HORFPs, the Hutton Review of Forensic Pathology[85] had been published. Hutton's scope initially extended only to the provision of forensic pathology services in England and Wales (in the narrow sense of HORFPs), but quickly expanded to include the coronial pathology service. Hutton's identification of the fragility of both services,[86] as well as raising concerns regarding the quality of the coronial service,[87] most likely emboldened the HORFPs. I was open about this in the recruitment materials sent to coronial pathologists. This led to a range of responses[88] which varied from refusal to engage with me because these criticisms were seen to be unfair (despite my making no statement about the accuracy of these claims), to a strong desire to refute them, to lack of surprise and implicit agreement. In assessing the claims made by both cohorts, I remain mindful that each group acts with self-interest, both in the sense of asserting professional authority, but also in terms of the financial benefit derived from their medico-legal work.

The thrust of the concerns reported to me by the HORFPs hinged upon the lack of what they considered to be essential *forensic* expertise amongst coronial pathologists. As Rutty, a HORFP at the time, publicly questioned about CorPaths, 'Their reports give their opinion, but is their opinion correct …?'[89] This allegation of potential inaccuracy was in turn linked to the risk of so-called 'missed homicides'. For the HORFPs, this was not simply a matter of CorPaths lacking technical skill and training in suspicious death detection, but rather that they believed that the tacit knowledge acquired through responding to multiple suspicious deaths (and thus viewing all deaths through this lens) is required to reach adequate conclusions. For example, HORFP 4 told me:

The coroner's pathologists… some of them are very good but they're not really trained to be … A lot of them have the view that if the body's coming to me, it's not suspicious, and not suspicious means not suspicious. So just seeing something on the edge that most people think that's a bit odd, they probably just ignore that and carry on …

HORFPs understand their primary role as being to detect homicides (/wrongful deaths); this occupational culture means that anything less than their skill set is lacking, and at worst dangerous. A common strategy when explaining this to me was to emphasise that only HORFPs were suitably equipped to detect many homicides. We see this in the quote below, in which

[85] P. Hutton, 'A Review of Forensic Pathology in England and Wales' (Home Office, 2015) 12-13 <https://assets.publishing.service.gov.uk/media/5a804f8ded915d74e622db6c/Hutton_Review_2015__2_.pdf> .
[86] id. Repeatedly, p. 2, 8, 51, 54, 78. 86, 92.
[87] id. pp. 74-75.
[88] This was not least because they were in the public domain via the Hutton Review. However, despite its relevance, very few of the coronial pathologists I spoke with had engaged with that Review. There are various explanations for this, but I suspect that high among them are the following: they are a much larger group, the initial scope did not include them, and their broader occupational identity is not tied to their autopsy work and therefore their engagement with it is less of a priority.
[89] Rutty, op. cit., n. 58, p. 72.

HORFP 2 not only highlights skill and resources, but alleges that CorPaths typically assume a natural cause of death. HORFPs also commonly complained that CorPaths failed to question deaths where police had determined no suspicious circumstances. As such, a conclusion of non-homicide became almost inevitable.

We do a lot more routine toxicological screening, so an example that's often quoted is Harold Shipman. Now Harold Shipman's cases were all poisonings, essentially drugs, and you're not going to pick that up even with a full forensic autopsy, unless you do toxicology sampling. So cases that come to us tend to get toxicology as a matter of course and you often pick up bizarre things that you didn't expect somebody would have taken, whereas the routine pathologists, if they open up the chest and find some heart disease, that's good enough on a balance of probability, is to tell the coroner, "It was probably a heart attack, don't worry about it," and of course they may have been bumped off with some injection or some drugs, so because the toxicological screening is not happening, that's not being picked up.

There is a practical reality behind these assertions of additional expertise in suspicious death identification: HORFPs undertake extensive training before admission to the Home Office Register. The autopsies they carry out are time consuming and detailed, and their conclusions are informed by engagement with other sources of evidence including physical science (for example, chemistry) and case specific forensic science (analysis of wounds, firearms analysis, scene of crime analysis and so on). They are subject to external regulation and audit in their role.[90] Whilst the methods used by HORFPs do not replicate objective science, and the exercise of subjective judgment involved in reaching conclusions is no less pervasive than for CorPaths, it does mean that a greater volume of evidence, time and experiential/tacit knowledge of homicide detection informs those judgements.

When responding to Hutton, the British Association of Forensic Medicine (the professional body representing HORFPs) argued that, 'In forensic pathology, rare things do happen (that is why such occurrences are rare and not impossibilities). Therefore, to satisfy the court (on a balance of probabilities or stronger) it is absolutely essential to do a thorough examination. This is precisely why a properly conducted autopsy is considered to be the gold-standard in medical audit – studies of, for instance, post-operative deaths have consistently shown that the autopsy picks up unexpected findings not appreciated by clinicians, which have had a major contribution to the cause of death – doing a limited examination on the basis of what is expected from the circumstances of a case is fraught with danger.'[91] This sentiment has been reiterated in other public forums. For example, in his evidence to the Justice Committee, (now retired) HORFP Ryk James argued that, 'Most postmortems are superficial and made by those who do not have familiarity with the kinds of death which they are attempting to exclude.'[92] Rutty argued that

[90] For details of how the list is maintained and the profession is regulated, see: Home Office, 'Forensic Pathology: Role within the Home Office' (2024), <https://www.gov.uk/guidance/forensic-pathology-role-within-the-home-office>.

[91] British Association in Forensic Medicine, 'A Response to the Hutton Review of Forensic Pathology' (2022), 12 <https://www.rcpath.org/static/12205132-4c4d-4685-b639e5e7466b05b8/British-Association-in-Forensic-Medicine-A-response-to-the-Hutton-Review-of-Forensic-Pathology.pdf>.

[92] R. James, 'Written evidence submitted to the Justice Committee on the Coroner Service' (2020) <https://committees.parliament.uk/writtenevidence/10241/pdf/>.See also, P. D. Lumb, 'Written evidence submitted to the Justice Committee on the Coroner Service' (2020)<

accuracy matters precisely because outcomes may have legal consequences, whether that be a criminal conviction, professional standing, or insurance payouts.[93]

But the HORFP's type of expertise comes at a financial cost. A change to a system where all autopsies are performed by, or at least in consultation with, HORFPs would require massive investment and restructuring. Such reform was advocated by Hutton – and by the majority of HORFPs – but is not something that has been taken up by the government. As CorPath 11 summarised:

…if there's any indication that there might be criminal activities or criminal damage- then that will be done by the forensic service. If there isn't that, it falls back to my jurisdiction because I'm £95 and they're £3,000…[94]

There is surely little doubt that the identification and prosecution of homicide is important – for society as well as individuals. Missed homicides therefore provide a trump-card-style argument supporting the need for this highly specialised service.[95] However, it is also worth noting that whilst they can be important sources of evidence, there is some doubt over the extent to which even the autopsies and associated work done by HORFPs are always able to identify homicide.[96] Rather, errors made in police investigations may be more significant.[97]

By definition, missed homicides are never identified as such, so their empirical significance can never be truly known. However, their number is likely to be low because the total number of homicides is small.[98] Whilst framing all deaths as potentially suspicious reinforces the importance of the HORFP's distinct and elite abilities, coronial pathologists were able to invert these claims by asserting that HORFPs lacked expertise in relation to the questions that are relevant to most coronial death investigations. That is, the role of the pathologist is to assist the coroner in their investigation, usually by identifying a cause of death[99]. This requires a good up-to-date understanding of everyday causes of death, whether from disease or other medical causes (for example, a heart attack is not a disease, but it can cause death). As such, in the quote below, CorPath 1 muses relative expertise:

It's interesting, this matter of expertise. We're not trained in forensic pathology; obviously when you do your training you read books about pathology and so you look at books on strangulation, hanging and all sorts of homicide-y type things, so you get used to quite a lot of the sort of stuff you would expect to see. But we spend – most of our time we spend doing surgical histopathology and other clinical things and so our interest and expertise is much more to do with natural

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https://committees.parliament.uk/writtenevidence/10902/html/>. ; G. Rutty, 'Written evidence submitted to the Justice Committee on the Coroner Service' (2020) <https://committees.parliament.uk/writtenevidence/10360/pdf/>.

[93] Rutty, op. cit., n. 58, p. 71.

[94] I am led to understand that this is currently under negotiation and is likely to increase to at least £4000.

[95] There are some things you can never unlearn. One of these is the HORFPs repeated identification of the difficulty of identifying 'subtle smothering' as the archetypal case for homicides that would be missed by many non-specialist autopsy pathologists.

[96] A. Davidson et al., 'Differences in Forensic practice between Scotland and England' (1998) 38 *Medical Scientific Law* 283, at 285.

[97] This point was also emphasised in the Shipman Inquiry, *Second Report: The Police Investigation of March 1998* Cm 5853 (2003); D. Jones and R. Milne, 'Dealing with death: a UK perspective' (2023) 8 *Intl J Forensic Science*.

[98] In the most recent crime year (ending in March 2024) there were 570 victims of homicide recorded in England and Wales. Office for National Statistics (ONS), op. cit., n. 6.

[99] Note this is not the same as 'the' cause of death.

diseases and how they affect the body, either locally or generally and obviously PMs are a very good way of looking at that. You see if somebody's got a systemic disease or a cancer or something, how does it affect the whole system rather than just the place where it's arisen and so on? So, we've got lots and lots of expertise in that... So, we benefit over the forensic boys in terms of natural deaths, by having that knowledge of normal processes. So, if they did a PM which turned out to be natural and the person had a tumour, they'd probably have to come and ask our advice about what the tumour was.'

I would argue that it is important to see HORFPs and CorPaths as intersecting, but distinct, sub-branches of the autopsy-practicing medical profession. They both ground their claims to authority in a balance of trained skill and tacit knowledge, but the nature and value of these is set against different normative positions regarding the purpose of medico-legal autopsies.

As CorPath 11 told me:

We're not trained necessarily to the level of the forensic service. I'm not necessarily sure we need to be ... because I think our role is quite distinct.

That is not to say that excluding suspicious deaths was not important to CorPaths, but rather that they took issue with the stated risk for the potential for missed homicides. Instead, they claimed that they had *sufficient* expertise to recognise a suspicious death and to decline to continue to autopsy in those cases (and advising the coroner (and police) that the case should be taken over by a HORFP). Thus, each type of pathologist is able to assert that their form of expertise is dependent on knowledge and experience which is exclusive to their sub-discipline and is necessary for effective responses to death across different legal forums.

There is an emerging additional layer to the web of medico-legal postmortem expertise. That is, coronial pathologists claim a hierarchy of expertise over radiologists who interpret Postmortem Computed Tomography (PMCT) scans. Whilst different coronial areas utilise PMCT in a variety of ways, some with pathologist involvement,[100] and to very different extents, I found widespread scepticism regarding the abilities of radiologists, as currently trained, to accurately identify cause of death.[101] For example, CorPath 5 commented:

I'm sure the radiologists are very capable of giving causes of death but I think they need to be trained more in saying if this is the circumstances of death that can't be the cause of death so, you know, if I do a CT on you, you've got advanced dementia and you took to your bed for about four months before you died and you've gradually deteriorated, you haven't died of ischemic heart disease, you've died of your advanced dementia.

Scepticism about PMCT is also voiced by HORFPs, who highlighted the further risk of homicides remaining undetected. This emerging and increasingly prominent debate underscores the ways in which the relationship between medicine and law (and now technology) is not only in constant flux but also is determined by the resources available. It also varies according to the views – and

[100] See: Ministry of Justice, op. cit., n. 8.

[101] This scepticism was present across both HORFPs and coronial pathologists, but, because of context, the rise of PMCT is less of a direct threat to the HORFPs as it is widely considered an adjunct rather than a replacement. See the Royal College of Pathologists, 'Guidelines for post-mortem cross-sectional imaging in adults for non-forensic deaths' (2021) <https://www.rcpath.org/static/666dbf95-de06-44ad-89c3b4e5f1ceab79/G182-Guidelines-for-post-mortem-cross-sectional-imaging.pdf>.

interests - of the individual medical and legal practitioners involved.[102] In each case, a disciplinary group claims that their form of expertise is not only exceptional but is also essential because of the risks to accuracy associated with the next level 'down'.

There are, as ever, crude financial realities underpinning the structure of legal processes and the interests of those who serve them. The extent to which this influences the claims and counterclaims of pathologists remains unknown, but I would suggest that it is likely to be significant. The BAFM argued that: 'maintenance of the distinction between those who have the professional competency to carry out suspicious death autopsies and those who do not is crucial to the integrity of our profession'[103]. Another way to interpret this might be to say that the continued existence of the HORFPs profession relies on acceptance that the BAFM's version of integrity is essential for law's needs, and the societal interest in justice, to be met.

CONCLUSIONS

Despite the importance of death and how we respond to it, there has been minimal socio-legal engagement with the medico-legal investigation of contentious death in England and Wales. This article represents a significant step in addressing that gap. My original data highlights the role, and limits, of the pathologists who conduct medico-legal autopsies in contributing to those investigations. The outcomes medico-legal death investigations matter to the living, as well as completing the story of the dead. I would emphasise that we should not forget the social context in which forensic medicine exists, for whether its involvement is triggered by a death or other crime, forensic medicine nearly always responds to trauma.

My data is placed against a historical context in which the discipline of anatomy, from which modern pathology emerged, was once given a privileged status as being capable of exposing the 'truth' of life and death. I have argued that this is no longer a relevant claim. Instead, pathologists understand their role as that of an expert in medical science. This is a science-informed conception of medicine which acknowledges the presence and importance of subjective interpretation in reaching clinical judgements. 'Expert' status is therefore derived from a profession specific combination of learned technical skills and tacit knowledge. In the context of their contribution to legal processes, this was translated by the pathologists into the language of expert 'opinion'. Nevertheless, and despite its own subjectivities, law and those who operationalise it, may gain their authority from a veneer of fact, truth claims and objectivity. In common with other experts in forensic sciences, this may place pressure on pathologists to frame their findings in a way that meets with this need or risk their status as experts whose contribution is valuable to the legal process. The use of 'opinion' therefore involves its own fine balance between minimising the risk of challenge and maintaining authority.

I have argued that there is a two-tiered medico-legal death investigation, with suspicious deaths and other deaths which are the subject of legal investigation being responded to by pathologists with different value systems and expertise. The consequences of this may be contested but it is not disputed that the system is at risk. Possible increases in the fee paid to coronial pathologists,[104] and the rising use of technology (such as PMCT) may keep the system limping

[102] For a discussion of this in practice, see S. Beardmore, et al., 'Impact of changing from autopsy to post-mortem CT in an entire HM Coroner region due to a shortage of available pathologists' (2023) 78 *Clinical Radiology* at 797-803.
[103] British Association in Forensic Medicine, op. cit., n. 91, p. 3, 12 .
[104] This was suggested during the response to the Justice Committee hearings, but no further progress seems to have been made. See: UK Parliament, Written Question 26768 (16 May 2025) <https://questions-statements.parliament.uk/written-questions/detail/2024-05-16/26768/>.

along in the short term, but it will not sustain it in perpetuity. It is against this background of scarce resources and economic self-interest that the importance of the different kinds of postmortem expertise should be evaluated.

At the core of my data is a conflict regarding both the nature and extent of the 'expertise' required for an effective death investigation system. Yet resources are finite, and choices must be made regarding priorities. This leads me to identify a key issue for further and, in my opinion, urgent research. That is, if we accept that a system cannot do everything - at least with equal effort and resources – which functions of death investigations should be prioritised. As James wrote in his evidence to the Justice Committee, 'Coroners are currently expected to uncover covert homicide where police investigation has not occurred; reveal substandard practices in hospitals and workplaces; prevent the repetition of circumstances prejudicial to public safety, and provide causes of death for registration, disposal and statistical purposes – yet without expertise in criminal investigation or medicine and without the resourcing such a wide remit would require'.[105] The necessity of medical involvement, and the degree and type of expertise required, including on the part of coroners, is therefore an increasingly important question which needs to be addressed.

There is much still to do. The research and data presented here have exposed both the importance and limitations of the medico-legal postmortem, whilst also highlighting the frustrations and fragility of this important process. I would argue that both the dead and the living deserve careful consideration of these questions and that addressing them should be considered as a matter of urgency.

[105] Written evidence of Ryk James, Written Evidence to the Justice Committee Inquiry on the Coroner Service (2020) < https://committees.parliament.uk/writtenevidence/10241/html/>.