

A Historical and Comparative Review of the Reception of Forensic Medical and Scientific Evidence under Different Systems of Law

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ABSTRACT: The purpose of this paper is to review the historical basis for the substantial differences which exist between the two main systems of law (common law and civil law) in the reception of forensic medical and scientific evidence by courts of law, and in the medico-legal investigation of sudden deaths in the community. The historical reasons for these differences are explained, and the relevant merits of procedures for presenting expert evidence in the courts of common law and civil law countries are discussed. The early appearance of forensic medical and scientific evidence in continental European (civil law) courts is contrasted with its long delayed introduction into common law countries. Special attention is given to the role of such evidence in the routine investigation of sudden death, which now serves an important public health function. The paper concludes by pointing to the paradox that the civil law countries have succeeded in ensuring that their courts of law receive the best forensic medical and scientific evidence, whilst at the same time failing to ensure that sudden deaths of unexplained cause are adequately investigated.

KEY WORDS: Accusatorial (adversarial) procedures, autopsy, civil law countries, common law countries, comparative law, coroners, expert evidence, forensic pathology, forensic scientific services, history of forensic science, homicide, infanticide, inquisitorial procedures, medical examiners, medico-legal institutes, medico-legal systems of investigation, sudden and unexplained death, toxicological analysis.