book reviews

Laws of men and laws of nature: the history of scientific expert testimony in England and America

By Tal Golan. Harvard University Press, Cambridge MA 2004. 336pp. £33.95.

This is a fascinating and timely book, with particular relevance to current controversies over the role of the expert witness. It records the troubled relations scientists and the legal system have had for more than 200 years. It was in eighteenth century England that contestants were first allowed to call expert witnesses for lawyers to cross-examine. As the complexity of cases increased, the need for both experts and lawyers grew steadily. American lawyers soon followed the English lead, and the adversarial system became firmly established in both countries.

This innovation was not without its problems. By the middle of the nineteenth century, with the widespread sale of conflicting, and sometimes bogus, expert advice, lawyers on both sides of the Atlantic had become disillusioned. There were a number of high profile cases in which doubtful or wrong expert evidence was accepted as true. The cause of justice was not well served.

Edwin Chadwick – the famous public health reformer – had a robust view of the problem, saying that it was caused, in his view, by 'the corruption and incompetence of both the legal system and the witnesses themselves'. In the 1860s, he and his colleagues recommended that, at least in civil cases, scientific assessors should sit next to the judge, as they regularly did in Scotland, and that consideration should also be given to the French practice of referring cases to officially approved scientists who would then submit their reports in writing. The British Association went further and recommended getting rid of the jury in civil cases of a technical character. Chadwick believed, however, that such reforms were blocked by lawyers 'who made profit of the existing system'. The debate was vigorous – but no changes were made.

Questions were asked as to whether the legal system was getting out of hand. In an 1879 murder case in New Haven controversies arose over tests for human blood and for arsenic, and no fewer than 106 witnesses were called for the prosecution and 70 for the defence. In 1895 there was another fillip to the growth of litigation, when attempts to introduce X-ray evidence began. Doctors started to consider how many objective tests might be needed to prevent claims for negligence, and the new practice of defensive medicine was introduced. The interpretation of the evidence brought before juries once again became the subject of conflicting expert views.

We may surely wonder (as did Chadwick's friends) whether untrained juries are equipped to handle the sheer mass of evidence and comment which can arise, and whether jurors are the best people to evaluate the opinions of rival experts. This is especially true in the United States, where prolonged cases can be taxing even to trained lawyers, and where juries in civil injury cases can assess damages at entirely arbitrary levels. In Britain, where juries are no longer used in civil cases, a single, impartial expert usually advises the court and does not act for the litigants. In criminal cases, on the other hand, there have once again been high profile cases in which doubtful or wrong expert evidence has been accepted, only to be challenged later. The expert at fault, however, is not acting alone, since a forceful cross-examination or misinterpretation by an inexpert jury can themselves cause problems. In the adversarial system, the experts – or the counsel – may be more impressive on one side of the case than on the other. That this can arouse hostility became very clear when an eminent doctor was recently struck off the medical register for 'misleading the jury' because of his 'misguided beliefs'.

As in the nineteenth century, mistakes can surely be made. The question to be answered, however, is whether the cause of justice might be better served if lawyers and neutral experts were appointed to assist the court rather than as gladiators – most prized when they win cases which others might lose.

What Tal Golan has highlighted so well is that, during more than 100 years of debate, there has been general agreement that the way in which expert witnesses are used is in need of reform. The more radical proposals have, however, raised fears that too many changes could undermine the long established adversarial system, the jury system, or even the neutrality of the court. If this interesting book suggests a moral, it is that legal traditions that have stood the test of time should be valued but should not necessarily be sacrosanct.

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Principles of medicine in Africa, 3rd edition

Edited by Eldryd Parry, Richard Godfrey, David Mabey and Geoffrey Gill. Cambridge University Press, Cambridge 2004. 1462pp. £120.

Too few textbooks have addressed the specific needs of doctors working in Africa. Notable and pioneering in their day, but now somewhat outdated both in their content and style, were Michael Gelfand's *The sick African: a clinical study*[1] and Campbell, Seedat and Daynes' *Clinical medicine in Africans in Southern Africa*.[2] Eldryd Parry's two previous editions of *Principles of medicine in Africa*, published by Oxford University Press in 1976 and 1984, have made a unique contribution to this sparse literature on a continent in which the challenges to health care are massive, diverse and evolving rapidly. The magnificent new edition achieves its stated aims of putting the medicine of Africa into its rural and urban context, emphasising basic mechanisms of disease and presenting practical and relevant information for those who are at the frontline of healthcare. My only concern is whether such a valuable resource can be made accessible to its intended readership of medical students