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Contributors

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PRESIDENTIAL ADDRESS

ON

*The Influence of Social and Legal
Restrictions on Medical Practice.*

BY

SIR JOHN TWEEDY, LL.D., F.R.C.S.

DELIVERED BEFORE THE MEDICO-LEGAL SOCIETY ON THE
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THE INFLUENCE OF SOCIAL AND LEGAL
RESTRICTIONS ON MEDICAL PRACTICE.

BY SIR JOHN TWEEDY, LL.D., F.R.C.S.

Delivered before the Medico-Legal Society on the 25th October, 1910.

GENTLEMEN,—Although this Society has been in existence for only eight years, it has already established customs. One of these is, that at the opening of each session, the President is called upon to give an address. This is my sole apology for the remarks I am about to make. Yielding to the repeated importunity of our secretary, I suggested the title of my address before I had formed any definite conception of its subject matter. At the meeting of the Society held in March last, Dr. Oppenheimer read an instructive and learned paper on "Liability for Malpraxis in Ancient Law." In some brief comments made in the discussion which followed, I expressed the opinion that the restrictions which had been placed upon the practice of medicine in ancient times, and the liabilities to which medical practitioners had been exposed in cases of ill-success or failure, had done much to check the progress of medical thought and practice. Having committed myself to a title for an address, I thought I might give it intelligibility by amplifying the comments which I made on Dr. Oppenheimer's paper, and state in more detail the reasons of the opinion which I then expressed. Looking more closely at the phrasing of the title, I fear that I may have laid myself open to misconception. I wish to state at the outset that I purpose to limit my remarks to ancient times, and in any case to a period not later than the end of the Middle Ages. This limitation will, I suspect, lessen the interest of some of the members of the Society in what I may say. The existing state of the law relating to the medical profession has, however, already been very ably presented by more than one member of the Society, and there will be ample opportunities for other members to deal with other aspects of the question.

The history of medicine, including surgery, furnishes many instances of the deterrent effects which various regulations and restrictions, risks and penalties have had upon the practice of medicine. In some cases the restrictions and penalties have been imposed by external authority, in others they have been imposed by real or by quasi-medical authority, and in others they have had their origin in the peculiar civil and social conditions of the time. Besides these

there have been more esoteric influences at work, due to the difficulties and dangers inherent to practice at the time when knowledge was imperfect, and the methods of diagnosis and treatment defective and uncertain.

In reflecting upon this subject one's thoughts turn almost naturally first to the practice of medicine in ancient Egypt. Egyptian medicine and its practitioners were renowned in very early times. In the fourth book of Homer's "Odyssey" we are told:—"In Egypt each man is a physician skilled beyond all mankind." Herodotus, writing in the fifth century B.C., states that medicine was practised in Egypt on a plan of separation, each physician treating a single disorder and no more, and hence the country swarmed with medical practitioners, some undertaking to cure diseases of the eye, others of the head, others again of the teeth, others of the intestines, and some diseases which are not local. (II, 84.) This elaborate specialisation may in one sense be regarded as evidence of a high degree of proficiency, but it is also evidence of a somewhat restricted training, inasmuch as the practice of most of the specialities was hereditary. Each person studied only one speciality, so that there was a lack of training in the whole range of the healing art. Medical knowledge and skill had attained its high level under the fostering care of an hereditary priesthood, but after a certain stage of development was reached the sacerdotal influence proved hostile to all experiment and progress. The heredity of the sciences destroyed the most powerful stimulus to extend its bounds. Egyptian physicians were obliged to treat their patients according to those rules laid down in those parts of the sacred books of Hermes which dealt with the body and its diseases. The death of a patient was a capital crime if it was found that he had been treated in another way. It is true that deviations from, and approved additions to, the sacred prescriptions were occasionally made. Now for any science to abide by written rules is absurd, says Aristotle in the third book of *The Politics*, and he adds that even in Egypt a physician was allowed after the fourth day to alter the treatment prescribed by authority, while if he did this before he did it at his peril (III, 15, 4). Diodorus suggests that the provisions laid down in the sacred books were made with the persuasion that few persons could be capable of introducing any new treatment superior to that which had been sanctioned and approved by the skill of the old physicians.

In striking contrast to the rigid regulations prescribed in ancient Egypt, it may be noted that in ancient Greece there seems to have been no liability for malapraxis, while in ancient Rome Pliny complains that there is no law to punish the ignorance of physicians, a

physician being the only person who may kill a man with impunity. (Hist. Nat., XXIV, 1.)

Through the recently discovered Code of Laws, promulgated by Hammurabi about 2,300 years B.C., we learn that liability for malapraxis was strictly enforced in ancient Babylon. If a medical man treated a person of position for a severe wound with a lancet of bronze and caused the patient to die, or opened an abscess of the eye with a bronze lancet and caused the loss of the eye, the surgeon's hands were to be cut off (section 218). With such a penalty in prospect, it is surprising that there was any one willing to undertake the treatment of any surgical case whatever. Now-a-days, no surgeon would dare to open an abscess of the eye with a bronze lancet under any circumstances. And I can scarcely imagine a surgeon, even with the best of modern appliances, and surrounded with all the safeguards of modern surgery, undertaking to open an abscess of the eye, if the loss of the patient's eye involved the amputation of the surgeon's hands.

The retaliatory mode of settling a surgeon's bill in the time of Hammurabi was, however, scarcely less drastic than that which obtained in Europe three thousand years later. In the plague which visited Europe towards the end of the sixth century, one of the victims was Austregild, Duchess of Burgundy. Prior to her death she accused the physicians of administering potions intended to kill her, and she entreated the King to avenge the crime. After the obsequies were performed, the King discharged the oath which he had freely given, and satisfied the posthumous desire of the deceased princess by slaying her surgeons, according to the old Teutonic law. The laws of the Wisigoths, for example, laid down that if a physician blundered in blood-letting, when the patient was of noble birth, so as to debilitate him, he should pay a fine of heavy damages. If the patient died, the surgeon was delivered over to the nearest relatives of the deceased, who thereafter became the absolute arbiters of life and death.

In the early part of the fourteenth century, Pope John XXII. having accused his physician-barber of seeking to bring about his death by sorcery and poison, and by the practice of magical art, had him flayed alive. The same Pope burnt at Florence another of his physicians as a sorcerer, upon the denunciation of a professional colleague, and yet the Pope was himself a believer in astrology, sorcery, and witchcraft. About the same time, John, the blind King of Bohemia, who was killed at the battle of Crécy, wildly but heroically fighting at the head of his knights, caused to be sewn up in a sack and thrown into the river Oder, the French surgeon, who had failed to carry out his promise to cure the King of an affection of the eye.

Parenthetically, I may observe that the King probably suffered from sympathetic ophthalmia, an affection still incurable, at any rate in its more severe forms. Roland of Parma, who flourished in the middle of the thirteenth century, records in his *Chirurgia* the precautions he deemed it prudent to take before venturing to operate on a case of traumatic hernia of the lung. The most skilful surgeons of Bologna had abandoned the patient to die. Roland, who had been called to the case, obtained permission from the Bishop to operate, and protected himself by guarantees of security from the patient, his lord, and thirty of the friends who assisted at the operation. Notwithstanding the favour of the Bishop, and the guarantees of the patient and his friends, it was, perhaps, fortunate for Roland that the operation had a successful issue.

The legal, social, and civil penalties to which surgeons in the Middle Ages were exposed accounts for much of the timidity and reserve of mediæval surgery. There were, of course, other causes peculiar to the state of surgery at that time, more particularly the ignorance of anatomy, the dread of hæmorrhage, and the imperfect means of arresting it, and not least, perhaps, the contempt with which practical surgery was looked down upon by clerical physicians of the day, as a mere handicraft beneath the dignity of a learned person. "O God!" exclaimed Lanfranc, towards the end of the thirteenth century, "Why is it that there is now so much difference between a physician and a surgeon, except that physicians have abandoned manual operations to laymen. *They* say it is because they disdain to work with their hands, but *I* believe it is because they do not know how to perform operations." Leopold, Duke of Austria, the captor of Richard Cœur de Lion, had his leg fractured from the kick of a horse. The limb mortified, and amputation was necessary, but no surgeon could be found willing to undertake the operation. At length, unable to bear his pain, the operation was performed by the Duke himself holding an axe to the limb while his Chamberlain struck the axe three blows with a mallet. But the Duke's sufferings continued, and the inflammation spread to the body. The bishops, seeing him in such a state of misery and suffering, admitted him to the communion of the faithful, "after which," says Roger of Wendover, "he expired in dreadful agony."

The scarcity of surgeons, and their reluctance to undertake the treatment of serious cases in distinguished persons, is exemplified in the case of Mathias Corvin, King of Hungary, who, having been wounded in the arm in a battle with the Turks in the year 1468, let it be known throughout all the countries of Europe that he would liberally reward anyone who would cure him. Many months passed

before a surgeon offered his services. Hans of Dockenbourg, a surgeon living at Strasburg, went to Bohemia, cured the King, and returned to his home rich in rewards and reputation.

The dread of undertaking the treatment of serious cases was almost an obsession with mediæval surgeons. Guy of Chauliac, who flourished in the first half of the fourteenth century, and is the greatest European surgeon from the time of Hippocrates to our own day, warns surgeons against undertaking what he designates "bad cases"—*malas curas*. In Guy's case the warning was mainly based upon considerations of the personal risks to which the surgeon exposed himself. It is noteworthy, however, that the writer of the Hippocratic Treatise, *De Arte*, also advises physicians not to undertake desperate cases; but it is instructive to note the difference of the moral attitude of the Hippocratic author and that of Guy of Chauliac. It was not the dread of personal consequences that influenced the Hippocratist, but the observance of an enlightened and logical principle. Medicine, he says, is the delivering of sick persons from their sufferings, and diminishing the violence of diseases, and not the undertaking of treatment of those who are overcome by sickness, because the medical art here is of no avail. He argues that medicine is an art, and to ask of an art what is not art is to manifest ignorance—an ignorance which exhibits more folly than mere want of instruction. In all things there are limits beyond which art cannot go. When a person is afflicted with a malady beyond the power of the therapeutical resources of medicine, one cannot expect art to triumph. The skilled physician knows what is within his power and what is beyond it. To demand of medicine to cure the incurable is to demand something beyond art and beyond nature.

The consideration of the differences in attitude between the Hippocratist and the surgeons of the Middle Ages suggests the inference that wherever and whenever the medical profession and medical practice were most highly organised, the penalties for failure and ill-success were most humane; and wherever they were less organised, the penalties were harsh and vindictive, and often inhuman. In the more highly organised state of medicine practitioners have been better educated, and more skilful, bolder when sure, but more cautious amid dangers, as Guy has it, more circumspect, and therefore more trusted. When the organisation has been imperfect, the number of educated physicians and surgeons has been fewer; while quacks and charlatans have been most numerous and most unconscionable. Brunus, writing in the middle of the thirteenth century, states that the majority of those who practised surgery in his time were ignorant, rustics, and stupid—(*idiota rustici et stolidi*).

Many of the surgical practitioners from the fourteenth to the sixteenth century belonged to a special class called Operators. These practitioners performed operations which were either forbidden to the clerical physicians or were abandoned by the Masters of Surgery, such as hernia and cataract, etc., in fact all the operations the consequences of which might be grave or fatal. Not a few of these operators belonged to the category which Guy of Chauliac, for good reasons, designates "coureurs." They had no fixed abode, but led a wandering life, travelling from town to town, and from one country to another, in search of patients and of cases requiring operation. Pierre Franco, who lived in the middle of the sixteenth century, was a distinguished and skilled member of this class of operators. He complains more than once of the contempt which the physicians of his day had for the work of surgery and for the operator. And he observes, not without a touch of acerbity, that if a patient die in the hands of the physician, the physician is always excused in some degree, and so also with the surgeon who does not practise operations, "but when what *we* undertake does not always succeed as happily as we could wish, we are called *murderers* and *executioners* and have often to take to our heels."

Examples and illustrations might be indefinitely multiplied, but those which I have given are, I believe, sufficient to establish my thesis, viz., that the restrictions and restraints placed upon the practice of medicine in former times, and the penalties incurred under liability for malapraxis, did much to hamper the practice of surgery and to check the progress of medicine. A glance at the existing state of the law relating to the medical profession, suffices to show how far we have travelled on the path of reason and humanity. In this respect at least, it may be said we have passed from contract to status. No medical man now makes a contract guaranteeing a cure. Chief Justice Tindal laid it down that—"everyone who enters a learned profession undertakes to bring to the exercise of it a reasonable degree of care and skill. He does not undertake, if he is an attorney, that at all events you shall win your case; nor does a surgeon undertake that he will perform a cure, nor does he undertake to use the highest possible degree of skill . . . but he undertakes to bring a fair, reasonable, and competent degree of skill." And so also with respect to penalties; Chief Baron Pollock in the case of *R. v. Crick* remarked: "It would be most fatal to the whole efficiency of the medical profession if no one could administer medicine without a halter round his neck"; and similarly, Mr. Justice Park observed in the case of *R. v. St. John Long*, "It would be a dreadful thing if a man were to be called in question criminally whenever he happened to miscarry in his practice."



