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by John Tweedy.**

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ON SOME PHASES OF 5  
THE  
CONSTITUTIONAL HISTORY  
OF THE  
COLLEGE OF SURGEONS.

BY  
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ON

SOME PHASES OF THE CONSTITUTIONAL  
HISTORY OF THE COLLEGE OF  
SURGEONS.



IN the issue of *THE LANCET* for March 9th the exclusion of the Members of the Royal College of Surgeons of England from participating in the management and administration of the College is referred to as a grievance of at least sixty years' standing. It is really of much earlier date, and had its first small beginnings in the sixteenth century, when, in accordance with what has been called the *Degeneration* of Gilds, the government of the gilds slowly slipped from the general assemblies of gild-associates to a "Court of Assistants" which had gradually grown up and usurped the government of the gilds.<sup>1</sup> Through the slackness, or

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<sup>1</sup> Brentano: *The History and Development of Gilds*, in "English Gilds," published by the Early English Text Society. London, 1870, pp. cxlviii. *et seq.* See also two articles published in *THE LANCET* on October 30th and December 11th, 1886, respectively, tracing the connexion between the history of the various surgical corporations which preceded the Royal College of Surgeons and that of the principal craft gilds.

ignorance, or indifference of the members of the Company, this usurpation was, in the year 1745, allowed to receive the sanction of Parliament by the Act (18 Geo. II., c. 15), which at once dissolved the union of the Companies of the Barbers and the Surgeons of London, and instituted the Corporation of Surgeons of London. The grievance did not, however, reach its culmination till the granting of the Charter of the year 1843 (7 Victoria), when the ancient right of eligibility to sit in the Council was, suddenly and without leave asked, taken away from all Members of the College who were not thereby created Fellows, or who should not subsequently become Fellows. This unnatural and enforced disability provoked the indignation of all other Members; and the present agitation, which began nearly five years ago, when the Council first sought to obtain certain alterations in the Charters, is only a late manifestation of an abiding resentment. No candid person, whether he sympathises or not with the aims of the Members to obtain a substantial share in the management of the College, can disregard these considerations.

The pleas which have been urged in support of the claims of the Members are chiefly three in number: first, prudential and political; second, legal; and third, historical. The first of these has been fully and elaborately set forth in various writings, and in the discussions which have taken place at the College and elsewhere, and the second is about to be argued in fit form in a court of law.

But, notwithstanding all that has of late been said and written, the third plea has not yet received that amount of attention which its weight and importance deserve. Viewed from the historical standpoint, the demand now being made by the Members is not for the acquisition of new privileges, but for the restitution of ancient rights and liberties. And in order to appreciate the grounds of this demand it is necessary to have some knowledge not only of the circumstances which immediately preceded and led up to the establishment of the present College, but also of the history and constitution of the several gilds and corporations from which the College has sprung.

Though a Gild of Barbers practising surgery existed in the City of London as early as the beginning of the fourteenth century, it did not attain to the rank of a company till many years later. In the year 1461 the freemen of the Craft of Barbers using the mystery of surgery were, by Letters Patent granted by Edward IV., made "one body and one perpetual fellowship or community." The masters or governors of the Company were to be elected annually from and by the fellowship; and the masters *and the community* were empowered as oft and whenever need be to "make honest and lawful assemblies of themselves," and also "ordain and make laws and ordinances."

In the year 1540 by Act of Parliament (32 Henry VIII., c. 42), "every person" in this Company of Barbers of London, and all the members of a Company of

Surgeons of London, were united and made one body corporate and one commonalty perpetual, by the name of Masters or Governors of the Mystery and Commonalty of Barbers and Surgeons of London, "to the intent that, by their union and often assembly together, the good and due order, exercise, and knowledge of the science or faculty of Surgery should be" more perfect. The members of the United Company were to enjoy all the benefits, liberties, franchises, and other privileges at anytime given or granted to either of the old companies.

The union of these two Companies was dissolved in the year 1745 by an Act of Parliament (18 Geo. II., c. 15), which enacted that those members of the United Company who had been admitted surgeons should be made "a separate and distinct body corporate and a commonalty perpetual," called by the name of Master, Governors, and Commonalty of the Art and Science of Surgeons of London. The officers were to be a master, two wardens, ten examiners, and twenty-one assistants. The master and wardens and examiners were to be elected by and out of the Court of Assistants, but vacancies in the Court were to be filled up by the Court from persons chosen "out of the freemen of the Company." Though, as already hinted, the master, governors, and assistants were empowered to hold courts, make bye-laws and ordinances, the commonalty was in other respects to enjoy the same liberties, privileges, and

franchises as by any former Acts and Letters Patent given, granted, or confirmed.

This Act of 1745 has never been repealed. And as this circumstance has a direct bearing upon the present controversy, it should be particularly noted that by the nineteenth section of the Act it was enacted that the sum of £510, vested in the United Companies of the Barbers and Surgeons, and given to the United Companies by Edward Arris for the use of public Anatomy Lectures on Muscles, and an annuity of £16 bequeathed to the United Companies by John Gale for one Anatomy Lecture, should "be vested in, and be deemed the sole property, estate, and effects of the Company and Corporation of Surgeons, established and incorporated by this Act," to be held in trust for the purposes intended by the donors thereof respectively. It is important to keep these settlements well in mind, inasmuch as the trusts which were then vested in and became the sole property of the Corporation of Surgeons have in some way fallen into the hands of the Council of the present College, which now uses and administers them. It will be interesting to learn by what arguments the Council will justify its administration of these trusts, at the same time that it must show that the constitution of the present College is regulated, not by the Act of Parliament of 1745, but by a Charter granted nearly a hundred years later, and which is in many respects at variance with the Act.

It is true that the preamble of the Charter of the year



1800 assumes that the old Corporation of Surgeons "hath been and now is dissolved"; but this assumption will scarcely condone the usurpation of trusts otherwise settled by law. It is nevertheless true that the ostensible reason for establishing the present College was the alleged dissolution of the old corporation; and it is necessary to recall the manner and circumstances in which the dissolution is said to have taken place, and the incidents which immediately followed, in order to understand the progress of subsequent events.

The third section of the Act of 1745 enacted that for the constitution of a legal court the master and the two governors, or any two of them, with nine of the assistants, should be present. It happened, however, at a meeting held on July 7th, 1796, that in consequence of the death of one governor and absence through illness of another, no legal court was possible; but, notwithstanding this, the master and some of the assistants determined to transact business. "The Company soon found that they had got into a very serious scrape, and on laying a case before counsel there was no doubt that their corporation was destroyed by the illegal construction of the Court of Assistants."<sup>2</sup> In the following year a Bill was introduced into Parliament at the instigation of *eleven* persons, members of the Court of

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<sup>2</sup> J. F. South: Memorials of the Craft of Surgery in England. London, 1886, p. 291.

Assistants, with a view to indemnify the Court and to legalise several of its unlawful transactions, as well as to procure a re-establishment of the corporation under the name of a College. The Bill had passed through the House of Commons and had been twice read in the House of Lords before the members of the corporation were aware of its purport. A petition against the Bill was thereupon presented to the House of Lords by 178 members of the corporation, stating that the promoters of the Bill had not convened the members of the corporation for the purposes of discussing the Bill and its clauses, or given any notification in any form that such a measure was contemplated. The petition further alleged that the master, wardens, and assistants of the Company had, without the knowledge or consent of the commonalty, made purchases greatly beyond the extent allowed by law, that by the Bill the ancient privileges of the Members would be annihilated, and that their right of meeting in a general court would be taken away, and that the Court of Assistants would be able to oblige members of the corporation to swear to the observance of such laws as the Court might make, although the Members themselves would have no voice in the making of the laws and no choice in the appointment of those who should make them.<sup>3</sup>

On June 19th, 1797, the petitioners against the Bill were

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<sup>3</sup> John Ring: Reflections on the Surgeon's Bill. London, 1798, pp. 65-69.

heard by counsel, who declared that if the Bill became law "all the concerns of the corporation would be laid prostrate at the feet of" the Court of Assistants.<sup>4</sup> On July 17th, the day fixed for the third reading, Lord THURLOW rose to give his dissent. He described the Bill as one of "shift and contrivance," and stated that the conduct of those who promoted the Bill merited no small degree of disapprobation. He added that when he first attended the committee on the Bill, he was "astonished to find them engaged in profound discussions on aristocracy, democracy, and all the learned terms which were employed in speculative policy. The opposers of the Bill were stigmatised as Jacobins. . . . . For his own part, he did not like Jacobins, but he saw no reason why people should be called Jacobins who merely wished to protect their property and to guard themselves against measures which they deemed to be injurious."<sup>5</sup> The Bill, he said, "went to invest the funds of the corporation in a committee of twenty-one persons. The parties opposing the Bill therefore had an obvious right to oppose it, and he was convinced that the House would never transfer—to use no harsher term—the property of men without their consent."<sup>6</sup> The principal supporter of the Bill was the Bishop of ROCHESTER, who said

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<sup>4</sup> The Parliamentary Register of the House of Lords. London, 1797, vol. iii., p. 219.

<sup>5</sup> Ibid., p. 227.

<sup>6</sup> Ibid., p. 229.

“he thought that he perceived an equalising spirit at the bottom of the opposition to this Bill. He thought Democracy a monster that ought to be unkenneled from its lurking places and hunted down wherever it could be found. It was a monster which in these times ought to be extinguished in the birth.” There were, however, “parts of the Bill to which he could not agree. He confessed himself unfriendly to the idea of investing twenty-one members with an absolute dominion over the property of the whole corporation.” “The question was put and carried without division that the further reading of the Bill be postponed to this day three months.”<sup>7</sup>

So scandalous were the disclosures which had been made, and so strong had the opposition become, that the Court of Assistants never again summoned up enough courage to apply to Parliament. But it occurred to a member of the Court that “a Charter from the Crown will be preferable to a Bill in Parliament.” A petition for this purpose was accordingly presented to the King through the Duke of Portland, and a draft of the intended Charter was submitted to the consideration of the Attorney and Solicitor-General. Some opposition, however, was made to this proposal, for a “caveat was lodged by a committee of members who had opposed the late Bill,” but it was unsuccessful.<sup>8</sup> A

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<sup>7</sup> The Parliamentary Register of the House of Lords. London, 1797, vol. iii. pp. 230-1.

<sup>8</sup> South, *op. cit.*, p. 295 et seq.

Charter was granted on March 22nd, 1800, reinstating the Company in its former position, and constituting it a College by the name of the Royal College of Surgeons in London.

This Charter contained many of the provisions to which the petitioners against the late Bill had most strongly objected, and in consequence of which the Bill had been thrown out. Of these, the provision precluding Members from a voice in the government was especially obnoxious. But even by this Charter Members (Fellows did not come into existence till forty-three years later) were left in the undisturbed possession of the inherent right of being eligible to be appointed to the governing body, and by implication to the office of president. The right was, however, as already stated, taken away by the Charter of 1843 (7 Victoria), which instituted the order of Fellows and practically settled the present constitution of the College.

There is so much to be said in praise of the institution of the Fellowship as an academical distinction, that it is easy to overlook the needless injustice wrought by the manner of its institution in abolishing the constitutional rights of Members, already reduced almost to vanishing point. That the exclusive electoral and political privileges attached to the Fellowship were not considered as essential to the value of the diploma as a mark of exceptional surgical culture and attainments is shown by the fact that the electoral power has throughout been restricted to the smallest possible limit

by the requirement of compulsory personal voting. Hitherto less than one-fourth of the total number of Fellows have voted at the elections of members of Council. Sir Benjamin Brodie is credited with being the promoter of the order of Fellows, and in the account which he has given of the reasons for establishing this order not a word is said about a suffrage or a franchise. "The object of this institution is," he says, "to insure the introduction into the profession of a certain number of young men who may be qualified to maintain its scientific character and will be fully equal to its higher duties as hospital surgeons, teachers and improvers of physiological, pathological, and surgical science afterwards."<sup>9</sup> It is surely not beyond the powers of medical statesmanship to devise a scheme by which these objects may be secured without perpetuating hateful and unjust political distinctions between Fellows and Members.

Many persons now living can recall the widespread disapprobation which the electoral clauses of this Charter provoked. Indignation meetings were held in London, at Colchester, at Shrewsbury, in Gloucester, and many other places, denouncing the Charter and demanding its withdrawal. Some idea of the prevailing sentiment may be gathered from the following forcible expression of editorial opinion (*THE LANCET*, vol. i. 1843-44, p. 125): "Without

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<sup>9</sup> Autobiography, in Works edited by C. Hawkins. London, 1865, vol. i., p. 108.

hesitation, we declare our belief that a more mischievous, a more iniquitous Charter never was honoured with the sign manual of the Crown. .... We shall find little difficulty in establishing the fact that it was obtained from the Executive Government—as was the Charter of 1800—by MISREPRESENTATION and FRAUD.”

London, March 12th, 1889.





