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ANATOMY ACTS OF CALIFORNIA*

A SURVEY OF FORMER AND PRESENT LAWS

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ANATOMY legislation in California in the past differed only in details from that elsewhere. This was probably due to the fact that it was based on that of other states, and that social conditions here were similar to those elsewhere at the time the various laws were enacted. In California, as elsewhere, for a considerable time before the dissection of the human dead was legalized, medical schools existed and human bodies were used for the instruction of students.

Cooper Medical College was founded in 1858 and Toland in 1863, but the first anatomy act was not passed until 1870. Before that time the necessary bodies must have been obtained in a manner familiar to all acquainted with the history of anatomy or of medicine, for it had been made the duty of someone to bury all the dead not claimed by relatives or friends, and disinterment for purposes of dissection was expressly forbidden.

Rules of Ancient Town Council of Edinburgh.
It is regrettable that our American commonwealths did not follow the good example of the Town Council of Edinburgh who, when granting a charter to the Incorporated Surgeons and Barbers, provided "that every intrant should 'knew anatomea nature and complexioun of every member in manis bodie,' for which purpose we (the surgeons) may have anis in the yeir ane condampnit man efter he be deid to mak anatomea of quhairthrow we may have experience Ilk ane to

* From the Department of Anatomy, Stanford University.

instruct uthers, And we sall do suffrage for the soule."

But one body a year was not much, and so when the school of anatomy was founded in Edinburgh in 1694 they were granted "those bodies that dye in the correction-house; the bodies of foundlings who dye betwixt the tyme that they are weaned and their being put to schools or trades; also the dead bodies of such as are stiflet in the birth, which are exposed, and have none to owne them; as also the dead bodies of such as are felo de se; likewayes the bodies of such as are put to death by sentence of the magistrat." This condition was not peculiar to England, however, for, according to Tulp, public dissections were made on Sundays in the Holland of his day, *provided there was a hanging*. These dissections were advertised boldly, like those in London in Shakespeare's time, and the fact that they were held on Sunday suggests that this was done to add to the obloquy. There was an admission charge of fifty cents, the best seats being reserved for the authorities and for physicians and surgeons. Upon the payment of a special fee, parts of the dissected body might be carried away by those interested, but it should not be forgotten that the dissections of those days were totally different from those of the present. They might better have been called inspections, for they took only a relatively few hours, and the entire proceeding was calculated to increase the punishment and to cast odium upon the lives of those dissected. It is regrettable that the stigma thus placed upon dissection of the dead in many lands in that early day still hampers us at the present time.

THE CALIFORNIA LAW OF THE YEAR 1854

It is of special interest that, although no medical schools existed in California in 1854, disinterment of the dead for purposes of dissection was specifically forbidden in that year, under the customary statute preventing desecration of sepulture. This statute (8, 1854), in fact provided

that "Any person or persons who shall enter or molest the enclosure of a public graveyard for agricultural, mining, or other purpose, or who shall disinter, mutilate, or remove the body of any deceased person, after the same has been interred in any graveyard, vault, or other place of burial, shall be deemed guilty of a misdemeanor, and upon conviction thereof, in a court of competent jurisdiction, shall be punished by imprisonment in the state prison not less than two, nor more than ten years." Relatives, however, might disinter bodies, and since Section 4 of this Act defined a public graveyard as a place "where bodies of six or more persons are buried," it is clear that some places of burial could, after all, be entered lawfully and that not all disinterments for other than the specified purpose were actually forbidden, provided the person who disinterred the body did not know for what it was desired.

A similar bill was passed by the California senate in 1873 and the Committee on Hospitals of the assembly suggested the addition of the words "or destroy or remove shade, ornamental or other trees, unless by direction of the proper authorities." This suggested that what was concerned was not merely the protection of cemeteries against "resurrectionists," but against other desecrations in other respects as well.

STATE MEDICAL SOCIETY'S RESOLUTIONS OF 1856

The earliest effort to legalize dissection which I was able to find was made by the State Medical Society in March 1856. In the minutes printed in the *California Medical Journal* 1856, Vol. 1, pp. 17-18, it is stated that Doctor Cooper offered the following preamble and resolutions:

Whereas, The laws of our state render surgeons obnoxious to prosecution and liable to heavy damages if they operate wrongfully through ignorance, at the same time making no adequate legal provision for obtaining a knowledge of the human system; therefore, be it

Resolved, That in view of the good of the pro-

fession, as well as community, dissections should be legalized, under all proper restrictions.

Resolved, That a committee of five (5) be appointed to memorialize the legislature upon the subject.

Upon motion, the above was referred to the Committee on Legislation.

Although I searched the legislative journals, I did not find any comment on or mention of such a bill. Nor did I find any comment on later bills and I did not feel encouraged to make a search of the daily press.

THE ANATOMY LAW OF 1870

Since the dead have, from time immemorial, been regarded as sacred and also as defiling, their use for purposes of instruction violates public sentiment and this use consequently had to be legalized. This was done in 1870. This law was entitled "An Act to Promote the Study of Anatomy," but it permitted "physicians" to have "human dead bodies or parts thereof for purposes of inquiry or anatomical instruction." Both "physicians" and "surgeons" were required, however, to present a certificate of fitness to possess the human dead, from the medical society or in the absence of such, from the county board of supervisors. A bond with two sureties was required of both physicians and surgeons and the dead were to be used only for the "advancement of anatomical science." Paragraph 1 permitted only "physicians" to possess the dead for purposes of "instruction and inquiry" and they alone were required to bury the bodies so used at their own expense, surgeons not being mentioned in this connection. The bodies of travelers and of those who had specifically requested to be buried, or such as were claimed by friends, were exempted from such use.

LATER LEGISLATION

Beginning in 1889, further exemption was made of the bodies of ex-Union soldiers, sailors, and marines who had been in the service of the United States. Their burial was provided for at public expense not to exceed \$50 each. In 1901

all such as were honorably discharged and the widows of these were accorded a similar right, and in 1911 the allotment for burial was raised to \$75. It was raised further to \$125 in 1913, but changed back to \$75 in 1917. This is a munificent sum compared to what the national government paid during the influenza epidemic of the Great War or pays now for the burial of veterans.

The law of 1872 (Political Code, sections 3093, 3094, and 3095), left that of 1870 unchanged except that preference was given to medical schools and the clause requiring "physicians" to bury the remains at their own expense was eliminated. Paragraph 291 of the Penal Code of this time put a penalty of imprisonment of five years on disinterment of the dead for dissection and on other desecration of sepulture.

THE LAW OF 1907

After the advent of osteopathy, the law of 1872 was revised in 1907 permitting a similar use of the dead by students of osteopathy. The wording of the law also was changed so as to permit anyone licensed by medical or osteopathic boards or students acting under their authority to obtain and have in their possession "human dead bodies or parts thereof" for the purpose of anatomical inquiry or instruction. The bodies were to be obtained from among those required to be buried at public expense and "any sheriff, coroner, keeper of county poorhouse, public hospital, county jail, or state prison, or the mayor or board of supervisors of the city of San Francisco" were ordered to surrender the unclaimed dead upon request to those entitled to receive them. Medical and osteopathic schools of the state were given precedence in this law, and the bodies of certain individuals were again exempted.

It is interesting that the only but very laudable, alleged purpose of the law of 1907 was "the promotion of anatomical science." This was the customary phrase, although the use of the dead for this purpose necessarily, though regrettably,

remained purely incidental to that of instruction of medical students. Although the law of 1907 was mandatory in regard to the delivery of the dead to those desiring them for educational purposes, it did not penalize those who failed to comply with this provision. Hence it happened, for example, that when the unclaimed body of an Indian who had been a public charge for twenty-three years was asked for by medical schools the person in possession of it announced publicly through the local press that "he did not believe in letting an old woman be cut up in the dissecting rooms." Since it was alleged that this pauper was over 106 years old, the unclaimed body was wanted for the investigation of structural changes associated with senility, by one specially interested in this subject. But in spite of the mandatory provision of the law, this body could not be obtained from him who sought to capitalize false sympathy for political advantage.

The attempt to make political capital out of such situations as this is not new, to be sure, and I recall a district attorney who announced in the metropolitan dailies of one of our central states that he did not propose to let the *unclaimed* body of an unfortunate young woman, illegitimately pregnant, who had committed suicide, become the object of "the ribald jibes and jests of callous medical students." Had this attorney spent some of his effort in determining who was responsible for her condition and suicide instead of reviling medical students, he might have done the community a real service. I further recall a candidate for mayor in one of our great cities who demanded that those entitled to them cease accepting bodies of persons who had belonged to a certain religious sect, although this particular sect, of which he was not a member, had made no protest to those receiving the unclaimed dead and always had coöperated in this matter. It is easy to see whose vote this candidate desired to obtain by such means.

The law of 1907 did not require those having the unclaimed dead in their possession to notify

educational institutions in need of them of this fact. The latter were hence put at a great disadvantage, for they manifestly could not ask for that which they did not know existed. Moreover, the law was open to the interpretation that a new bond had to be supplied for every body, or at least in every county in which it was proposed to ask for bodies, and the period in which the dead could be claimed by relatives or friends was entirely too brief. For these and also for other reasons it seemed best to undertake a revision of the existing law or to introduce an entirely new bill.

THE PROPOSED STATUTE OF 1921

Some features of the situation seemed to suggest that it would be wise to place the entire matter before the medical profession of the state through its official journal, but this was regarded as inadvisable out of political considerations. Hence, after long consideration, a bill acceptable to all consulted was formulated in 1921 and placed in the hands of Senator Herbert C. Jones for suggestions and for introduction into the legislature.

Everyone familiar with the history of anatomy acts will realize that political preferment could not be gained by anyone sponsoring such a bill, however just, proper and necessary it might be. Whoever did so took some chance of offending public sentiment and of incurring the opposition of a few interested individuals, for although it is expressly forbidden, some of the latter really had been trafficking in the dead *de facto* if not *de jure*. This is the very reason why cities could find individuals anxious to bury the unclaimed dead for \$2.50 each at a time when the burial of certain classes of the indigent dead cost the public \$125 each.

The bill of 1921 provided for a special anatomical board to be composed of representatives of the institutions concerned and failed of passage merely because it was not reported out of committee in the assembly. Those who had it in charge there stated that they had assumed that

it would be reported as a matter of course, for there had been no objections to it. It had seemed unwise to introduce it earlier, and it apparently was overlooked in the rather politically excited closing days of that legislative session.

The above bill was reintroduced at the next session in somewhat revised form, with the elimination of the provision for a special board because the then governor had used the slogan of economy during his campaign. We had been advised that it would be well to avoid the creation of a special board, even if this involved no added expense to the state. Fortunately the State Board of Health consented to assume the added duty of assigning the unclaimed dead and the bill was changed accordingly. An opportunity was given the governor to express his preferences regarding the bill, and in accordance with his suggestion, Senator Jones was again requested to introduce it into the senate, where it passed with practically no objection. The bill had met with no previous objection except that the recognition of cremation as a method of disposal of the unclaimed dead was desired by those commercially interested. This recognition was readily consented to by all concerned, for such a provision had not been thought of by those who had formulated the original bill, merely because the customary phrase in previous laws always was "burial of the unclaimed dead."

Assemblymen C. C. Spalding and Albert A. Rosenshine consented to sponsor this bill in the assembly. It passed unopposed, and apart from a report that certain undertakers objected to it because they wrongly asserted that it required undertakers to hold all bodies subject to claim for thirty days, no objections were raised to it as far as I could learn. This objection was, of course, wholly unfounded, for the bill very plainly provided that not the undertakers but those who claimed the bodies for educational purposes should hold them that long, subject to claim by relatives or friends. Undertakers were required to hold the dead only twenty-four hours, as pro-

vided in previous laws, and they hardly were in a position to complain, for, as everyone knows, unclaimed bodies are voluntarily held much longer than required by law in order to afford time for the discovery of claimants who may pay much more for the burial than the public, for it is only in this way that the burial of the unclaimed dead can be made profitable in our metropolitan centers, in one of which five hearses were waiting recently outside a public hospital for one indigent to die!

That there really is keen competition among some undertakers for the burial of the unclaimed dead at the present time is attested by the following contemporary news item taken from one of our smaller dailies. It suggests that one still might appropriately quote the old couplet beginning

"While rival undertakers hover round . . ."

INDIGENT DEAD TO BE BURIED AT COST OF ONE CENT

— Bureau, —, June 8. Because of close competition between rival undertaking establishments, — County has negotiated a contract under which indigent dead of that county will be buried during the coming year at one cent per funeral, according to word received here today from —.

The contract was reported as providing for a ten-cent mileage charge for cases outside the County Hospital.

The vultures of Benares have no one to tell them of the bringing in of the dead and only come to satisfy their hunger.

Although the privilege of answering any objections that might be raised to executive approval of the above bill by others or that the governor himself might have to it was asked in the name of all interested in it, no such opportunity was afforded although the bill was vetoed. When inquiry was made regarding the reason for this veto, the governor concerned wrote saying he would be glad to consider the bill with us if we decided to introduce it at the next legislature, and added that he had vetoed it "on account of objections filed and for reasons which I deemed

sufficient." Although the privilege of answering any objections that might be raised against its approval had been asked for in the name of all concerned, as stated, this courtesy had not been extended.

In view of the governor's statement that he would be willing to consider the bill with us if we decided to introduce it at the next legislature, he was given such an opportunity. He was also informed that we should be glad to know the nature of the objections alleged by him to have been filed against it, and to consider any changes which he cared to suggest. No information regarding objections to the bill was supplied, nor were suggestions for its modification made. The governor merely wrote that the previous bill "was opposed and represented as a bad bill" to him, and added that he would give the present—the third—bill careful consideration. Hence, after consulting those concerned again regarding any changes, the bill was reintroduced by Senator Jones and passed both houses without objection, but was vetoed again by the governor, without giving its sponsors an opportunity to answer any objections that might have been raised to his approval of it. Yet this courtesy had again been asked in the name of all those concerned in its passage, and the governor had written saying he would be glad to consider it with us. When inquiry was again made regarding the reasons for the executive veto, the governor's secretary merely wrote saying that the inquiry regarding the governor's adverse action on the anatomy bill reached Sacramento during his absence in a southern city of this state.

It will interest everyone that before the next election, that of 1926, assurances were given that the governor, then a candidate for reelection, would approve the bill if it were again introduced, and that he said he merely vetoed it out of spite for a certain individual whom he honestly disliked! It so happens that the individual referred to gave this and all other medical legislation his friendly support, but was not one of those who

was particularly consulted or especially concerned with its passage.

I trust that no one will suspect me of acting from political motives or of writing from mere gossip regarding these matters. Anyone familiar with political history will know that what usually is printed is, after all, only a very brief or incomplete but not, therefore, a partial record of the actual story, and this holds also in this instance. I regret that I have not been able to learn the inside story of the older bills, although I have spent considerable time on the matter. Neither the journals of the senate nor of the assembly nor the respective appendices contain more than the mere mention of the bills, and all the early medical journals also are silent. This would suggest that their passage or the attempted passage of other bills was wholly uneventful. This is quite improbable.

THE ENACTMENT OF THE PRESENT LAW IN 1927

With the election of Governor Young, the same bill was introduced for the fourth time by Senator Jones in 1927. It again passed both houses without objection and was approved by the governor, thus ending a rather long and tedious attempt to improve the Anatomy Act of 1907, twenty years later.

The law as it now stands is not the best that could be formulated, but only the best it was thought possible to secure at the time. It has a number of very advantageous provisions among which are the following:

1. The extension of the time during which bodies may be claimed by relatives and bona fide friends, from a period of twenty-four hours to thirty days.
2. It requires the keeping of records and their transfer upon request.
3. It puts the custody of the unclaimed dead in the State Board of Health.
4. It makes it mandatory to notify the State

Board of Health of the possession of the body of the indigent dead.

5. It forbids autopsies on such bodies without consent of the state board or its representative or representatives.

6. It makes it lawful to obtain fresh human tissue for microscopic investigation at time of a coroner's autopsy.

7. It imposes the expense of burial upon relatives or friends who may claim the dead.

8. It makes noncompliance with its provisions a misdemeanor.

Experience with the administration of the Act of 1927 confirmed the surmises of those especially concerned in the formulation of the bill. Hence an amendment was formulated in 1929 through Dean Millberry, the representative of the State Board of Health for Northern Institutions, and with the coöperation of that board, providing that the bodies of all unclaimed dead shall come directly into the custody of educational institutions *at the place of death* and stipulating that "No other acts or parts of acts shall be construed as limiting the powers of the State Department of Public Health in the transportation or distribution of the indigent dead for educational purposes."

Since a single county with a population of only about 100,000 now buries more bodies annually at the expense of the taxpayers than are required by all the educational institutions of the state, it is evident that there is no dearth of the unclaimed dead. And since the people of California have, through their representatives in the legislature, repeatedly reaffirmed their wise decision to permit the use of the bodies of the unclaimed dead for educational and scientific purposes, no one should be permitted to stand in the way of the present law, for I do not believe that our people will become so benighted as to forbid the use of the dead for the instruction and help of the living. That would be more than suicidal, for the innocent also would suffer in consequence.

It is interesting that similar difficulties and experiences still are encountered in Scotland, where the Anatomy Act merely is permissive. As late as 1921 Professor Robinson wrote:

"It is well known that the number of unclaimed bodies buried in the United Kingdom every year at the public expense is sufficient to supply all the medical schools with the material necessary for the training of surgeons and physicians, yet there are few, if any, schools which receive an adequate supply, and the majority never have anything like a sufficient supply.

"That the supply known to exist is not available for the purpose for which it is essential is because, in many cases, members of the authorities to whom the legal control has been deputed give sentimental considerations more weight than considerations of the public welfare, and take means to evade the spirit of the Anatomy Act.

"It is to be noted that only the bodies of those who have no relatives are placed by the Act at the disposal of the state, and surely no one in authority has any justification, in such circumstances, to placate sentiment at the expense of the public good.

"The bodies which are sent to the medical schools suffer no disrespect; everything which is done to them is done under the control and inspection of H. M. Inspectors of Anatomy up to the time of the burial of the bodies in consecrated ground."

COMMENT

It is a great satisfaction to recall that it has not been the people at large who have been responsible for the difficulties connected with obtaining the bodies of the unclaimed dead, but only a few financially interested individuals who have relied for protection against exposure upon the possibility of taking advantage of public ignorance, sentiment, and belief. If these persons had to live without all the beneficent things that they owe to medicine and also had to go without the care of physicians, they would have a rude awakening and would meet with more condign punishment than any that could be imposed by law. Moreover, if the people were told the real facts, the few who use the unclaimed dead for profit would stand forth in their true character and could no longer disgrace their fellows.

The institutions which need the dead and are entitled to them by law always have paid undertakers considerably more for the *delivery of an unembalmed body* merely covered with a sheet than generally was allowed for the burial of them by municipalities or counties. Even a pauper's burial necessitates calling for the body, putting it in a black redwood coffin, digging the grave, interring the body and providing a plain board (numbered for identification), and keeping and filing the record, while all that is asked by educational institutions is the delivery of the naked body to them, the recognized claimants under the law.

Stanford University.

ANATOMY ACT OF CALIFORNIA

This act, as amended in 1929, reads as follows:

The people of the State of California do enact as follows:

Section 1. It shall be the duty of every sheriff, coroner, keeper of a county poorhouse or reformatory, public hospital or asylum, county jail, state prison, or city or county undertaker, or any and all state, county, town and city officers having possession, charge or control of bodies to be buried at public expense, or the legally constituted representatives of any or all of these, to use diligence to notify the relatives of the deceased and in the absence of a claimant, who will assume the cost of burial at private expense, to notify by telegraph collect, immediately after the lapse of twenty-four hours after death, the state board of health or the duly authorized agent of the same, stating, whenever possible, the name, age, sex and cause of death of any person or persons required to be buried at public expense.

Sec. 2. It is hereby made unlawful for any person or persons, except those specifically authorized by law, to hold a postmortem examination on the body of the unclaimed dead without the express permission of the secretary of the state board of health or the duly authorized agent of the same.

Sec. 3. The unclaimed dead retained by the state board of health for educational purposes within the state shall be embalmed according to directions, and disposed of subject only to the instructions of the said board; *provided, however*, that such unclaimed dead shall be held for a period of thirty days by those to whom they may have been assigned for educational

purposes, subject to claim and identification by any authenticated relative of the deceased for purposes of burial at private expense.

Sec. 4. The bodies of the unclaimed dead shall be used solely for the purpose of instruction and study in the promotion of medical education and science within the State of California, and any person or persons found guilty of the unlawful disposition, use or sale of the body or bodies of the unclaimed dead or violating any of the provisions of this act shall be guilty of misdemeanor.

Sec. 5. It shall be the duty of those in charge of all public institutions in which the deceased was an inmate to transmit, upon request, to the secretary of the state board of health or to any person designated by said board a brief medical history of the unclaimed dead for purpose of identification and permanent record, which records shall be open to inspection by any state or county official or prosecuting attorney. All persons receiving the unclaimed dead for educational purposes within the State of California shall bear all reasonable expense incurred in the preservation and transportation of the dead and shall keep a permanent record of bodies received, giving the identification number, the name, age, sex, nationality and race, if possible, together with the place of last residence of the deceased and the source and disposition—with dates— of the body.

Sec. 6. Whenever the duly authorized officer or agent of the state board of health deems a body required to be buried at public expense, unsuitable or unnecessary for scientific purposes, he shall notify the official custodian of such body or bodies in order that it may be cremated, or buried at public expense as required by law. No warrants for the payment of the expenses of the burial of any person whose body is required to be buried at public expense shall be drawn or paid except upon the certificate of the duly authorized officer or agent of the state board of health, stating that such body is unnecessary or unfit for anatomical purposes, or that the body is that of a soldier, sailor, or marine, or that of a widow of a soldier, sailor, or marine. Whenever, through the failure of any person to duly notify, or to promptly deliver into the custody of the educational institutions at the place of death the body of a deceased indigent as required by this act, such body shall become unfit for scientific or educational purposes the duly authorized officer or agent of said state board of health shall so certify and such body shall be buried at the expense of those guilty of noncompliance with such provisions of this act.

Sec. 7. All persons authorized by law with the performance of postmortem examinations are hereby authorized and directed to permit, with the consent

of relatives, or in the absence of such relatives, with the consent of the state board of health or the duly authorized agent of the same, any representative of the anatomical or pathological departments of properly incorporated medical departments, schools, or colleges to obtain at the time of necropsy or inquest, such material in the recent state as may be needed for scientific purposes, if said material is not required for the legal purposes of the state.

Sec. 8. Sections 3094 and 3095 of the Political Code, and all other acts or portions of acts in conflict with this act, are hereby repealed.

Sec. 9. No other acts or parts of acts shall be construed as limiting the powers of the state department of public health in the transportation and distribution of bodies of the indigent dead for educational purposes as provided in this act.