

LAW AND MEDICINE.*

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I am delighted to meet the members of the Aesculapian Club. I am reminded of the story of your eponymous hero, Aesculapius, the father of all physicians. It is said that he was the son of Coronis by Apollo. While he was still *in utero*, or, as we say in law, *en ventre sa mère*, his mother was slain by her jealous lover; and when her body was to be burned, Hermes saved the child from the flames, having successfully performed the Caesarean operation. Thus early in the history of the science is proved the efficacy of the knife.

“Which things are an allegory.” “Coronis” means nothing else than “that which is curved or crooked.” Is the plain meaning not that Apollo, who had to do with man’s disease and health, called in the assistance of what was crooked (a clear allusion to bread pills and the like), and so brought forth something new—the medical profession? Of course the story of the child escaping the fire through the assistance of the god of trickery is significant of how the medical profession *does* get out of a hot place with the help of ——. But I do not further pursue the subject.

The temptation is, of course, very strong indeed to consider the story as an indication of the view of the ancient Greek that it took a god to “get onto the curves” of the medical man. But the Greeks were a wholly sane people; and they never could have suggested even in their mythology that the god of the sun himself could do *that*. So that view is quite excluded, even if it were not the fact—as I must regretfully admit that it is—that there is no really satisfactory evidence that the word “coronis” ever was used in any Greek expression corresponding to that in our vernacular which I have employed. So we may be thrown back on the other interpretation.

Or am I quite wrong? And does the story not mean that the bright god who has the power to ward off plagues and epidemics and to relieve mortals from disease, evolved from the crooked Shamanism and quackery of the existing pretended healing art a new and better science—thereafter destroyed the old; and the

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new science became a living and active force through the study of nature? For Hermes was the god of nature as well as the god of thieves.

The story that he was brought up by Cheiron the Centaur may indicate the dependence of the G. P. upon his stable-man; or it may show symbolically that he must work like a horse, though with the brain and intelligence of a man.

Whatever be the true interpretation of the myth, it seems to me—notwithstanding the doubts sometimes expressed—clear as anything can well be in the absence of contemporary record, that the ultimate source of the medical profession is to be looked for in that body of men found in all peoples of a certain grade of civilization, in which the priest and physician are one and the same person—“Medicine man,” “Shaman,” or whatever the name he may bear. The origin is, of course, lost in antiquity.

In the profession of the law, on the other hand, we can trace with reasonable certainty, beginning and advance. As law at first was in no way different from the customs of the tribe, supposed to be thoroughly known to all, there was no need of the advocate; and it was not till comparatively late in history that advocacy appears as a profession. Take Athens, for example—the Court consisted of a defined portion of the freemen of the State. All the people took part at some time as jurors, and the litigant addressed the people assembled. In time it became the practice of the litigants to procure speeches to be written for them by skilled dialecticians, but counsel was not, at first at least, called in.

In Rome, indeed, rather early the advocate did make his appearance—the effect of his eloquence and skill everyone knows. In England it was well within historic times and during the Plantagenet period that we first hear of barrister or attorney.

And in the subject matter of the sciences, there has been a like difference.

Real medical science may be said to have begun with rational empiricism and experiment. The story may not be accurate that the first system of medicine was based upon a comparison of the remedies which patients had found beneficial, the treatment and the result being recorded in the Temple of Aesculapius. But whether that be so or not, there can be little doubt that it was by some process of observation and comparison of the results of remedies that system, however defective, was introduced into medicine. This must needs be a science of observation and experiment—and most of the absurdities of mediaeval

(you will observe how careful I am to particularize and emphasize "mediaeval") physicians arise from the fact that they tried to make everything fit into a preconceived theory—itsself the result of immature and unfounded generalization. Modern medicine has generalized; but that process has been held in check, and theory made to give way to fact, not fact to theory.

In law, empiricism is out of the question. The customs of the clan, tribe or nation are established facts—the early kings and judges indeed received illumination from the gods, but the "themistes" so received were delivered by them to the people; and these again were established facts. And where the customs of the people were not supposed to be known to all, but were treasured up by a college of priests or the like, the customs were none the less known facts. The law then was a matter of authority, not of experiment—that litigant had success who managed to keep closest to what authorities laid down for his guidance, while that patient was not always the most fortunate who was treated most *secundum artem*. (Of course again I am speaking of very remote times and with no reference to the present.)

It is most interesting to compare the views of medical men now with those of their remote professional ancestors. At first, and for ages, all disease was supposed to be caused by an angry god, either by immediate stroke or through the agency of a daemon or sprite—disease was the act of a being indefinitely great as compared with man. Now, at this long last, it is the indefinitely minute, the bacillus, the coccus, the spirillum. Formerly the god had to be propitiated by sacrifice; now the potent mischief-maker must feed itself to death, or be met by some entity still more potent.

It is not exactly so in law; but not wholly dissimilar. In olden days it was all custom; and the customs were believed not to be of human, but of divine origin. The founding god or the eponymous hero of the clan had laid down the rules his descendants were to observe—violation of any of these rules was sin and crime (there was for ages no distinction between sin and crime), every member of the community had a right to the observance of these rules by others, as well as the duty to observe them himself. And it was the god or the deified ancestor who inspired the king or judge in deciding what was the right, that is, what was in accord with the original plan. All law was divine, and from a divine law-giver; and man could not make or change. "Great Pan is dead," the gods have passed away, the heroes have lost their traditional power; it is recognized that man may—and must—make rules for himself—*vox populi* is now indeed

what *vox dei* was supposed to be; and for all practical purposes *vox populi est vox dei*. Nor god nor king has "the right divine to govern wrong": that is reserved for elected Parliaments and Legislatures.

Far be it from me to compare the sovereign people or their representatives to the bacillus, the spirillum—but from a god to a voter is in the same direction—though the distance may perhaps not be quite so great—as from a god to a typhoid germ.

And both professions have profited by the change. In medicine, the supernatural is almost if not quite effete. No longer is that grim passage of Scripture quoted, "And Asa in the thirty and ninth year of his reign was diseased in his feet until his disease was exceeding great. Yet in his disease he sought not to the Lord, but to the physicians. And Asa slept with his fathers." [I pause here to say that it may have been his name, which means "physician," that made Asa prefer the doctors; and I further remark that it seems to have taken two years for them to kill Asa, even with this disease of the 'feet.']

Nor would now much, if any, attention be paid to such an argument as was with fiery ardor launched against Simpson's proposition to use chloroform in midwifery. The Scottish clergy inveighed against the practice as sinful, as being, they said, an attempt to interfere with the primal curse laid upon the woman: "In sorrow thou shalt bring forth children." Simpson, indeed, replied with some effect that the first surgical operation on record was anaesthetic; for when the excision of one of the costae was to be made from our first ancestor, the Operator "caused a deep sleep to fall upon Adam, and Adam slept."

No plague or epidemic comes now from the superior, but from the lower and controllable—and nothing is sacred to the hygienic physician.

And in like manner all reverence is lost for old ideas in law—we know now where our law comes from; if we do not like it, we change it; the new is ruthless with the old. It is a distinct gain that we have learned that nothing is valuable simply because it is old, or true because our fathers said it. The Homeric heroes boasted themselves as being greater than their fathers—we should be ashamed if we are not greater than ours. We have had all the opportunities they had, and more; all the examples they possessed and theirs in addition.

But while our law is thus in a state of flux, it must not be forgotten that immensely the greater portion of it is in principle the same as it has been for centuries. While in medicine, in not one case out of twenty can a physician gain any practical advan-

tage by consulting an authority twenty years old, in law there is not one case in twenty in which authorities much more than twenty years old will or may not be—if not conclusive, at least of advantage. A physician who has been in practice twenty years will have twenty times as much to unlearn as his brother of the same age in the legal profession—the former generally must

“Be not the first by whom the new are tried,
Nor yet the last to lay the old aside”;

but with the latter “*novum et ad hanc diem non auditum*” is anathema as it was to Cicero, one of the greatest of his tribe; and his rule must be “What is new is seldom true; what is true is seldom new.” *Immer etwas Neues, selten etwas Gutes.*

With their varying functions and in their different spheres, the two professions of law and medicine have the same object in view—the good of the people—incidentally, of course, the good of the practitioners themselves. Lawyers, I know, are often charged—as though that were, if not a crime, at least a sin—with practising for money: physicians with insisting upon as great remuneration as possible for their services. We have good authority for the doctrine, “The laborer is worthy of his hire.” And while I do not deny that both doctor and lawyer work for and expect to receive money, I have not found as yet any branch of trade, any business or profession which is different in that regard. The farmer does not carry on his farm just because he will thereby increase the wealth of his country; the mechanic is not wholly altruistic; the merchant will shut up shop if he cannot get paid; the valuable services of the press are not uncommonly billed at twenty cents per line, and when the child of a clergyman was asked if his father was going to accept a call to another church at a larger salary, he said, “Well, pa is still praying for guidance, but ma is busy packing.” “The chieftain to the Highlands bound,” who cried

“Boatman, do not tarry;
I will give you a silver pound
To row me o’er the ferry,”

was told indeed by “that Highland wight,”

“I’ll go, my chief, I’m ready;
It is not for your silver bright,
But for your winsome lady.”

But the poet (being a Scotsman and consequently truthful) does not venture to say that that Highland wight did not have

in his sporrán that same silver pound before the boat left the dock. If he did omit this trifling formality, he was different from his countryman spoken of the other day in *Punch*, who said to the passengers upon his ferry-boat, when the storm became dangerous, "There's nae sayin' what may happen; sae Aw'll just tak' yer fares."

This I can say—I was at the Bar for over twenty-three years and have been on the Bench three more; and I have never known or heard of a case in which anyone, however poor, with any fair semblance of a righteous claim, who could not have his case put before the courts by a member of the Bar with all energy and skill; in most cases without any reasonable hope of remuneration—and if any person sick or maimed should suffer because a doctor could not be found who would attend him gratis, the whole country would be filled with the outcry.

Both professions are given certain privileges for the common good and both make it, or should make it, clear that these privileges are exercised for the good of the community. Just so soon as either fails thus to pay for its privileges, the people have the right—and should exercise it—of taking these privileges away. But that day I venture to think is far distant; and will, indeed, never come if the practitioners of the two professions continue to act as they have done in the past and are still acting.

The two professions have generally lived in harmony, though each has its jest with the other—the lawyer jibes the doctor that his failures are six feet below ground; the doctor retorts "and yours are six feet above." The doctor "jollies" the lawyer about charging \$100 a day at a trial and pumping up tears before a jury; the lawyer replies, "a trial is a major operation, and mighty few doctors will take as little as \$100 for an excision of the appendix if they can get more. A trial is a struggle against a mortal antagonist for rights claimed on behalf of the client. Treatment of a disease is a struggle for the life of a patient against the antagonist whose name is Death—and a physician who would not pump up tears or anything else if he thought that he would thus win his fight would not be worth much; and the arguments of a counsel could not be more fallacious than the *placebo* treatment with colored water and bread pills."

Indeed, the thought that both are often engaged in a struggle for another is one which should bind the professions together. I am not sure which has the easier task.

The doctor is ever in fight with that dread antagonist who must conquer some day—that antagonist sits at the other side of

the chess-board and watches every move; he is in no haste, but while he plays fair, he never makes a mistake himself, and he relentlessly exacts the full penalty for every mistake of his opponent—and unfortunately that opponent does not know all the rules of the game. The lawyer has an antagonist fallible as himself and one who does not always pursue his advantage; but all the rules of the game are known. Which contest do you prefer?

Do you prefer an antagonist, invisible, without haste, rigidly fair, absolutely infallible, who knows (what you do not) all the results of every act, or him who is visible, mayhap hurried, seeking advantage, but making mistakes like yourself and with the same knowledge as you?

Whether it is from their lives being lives of conflict or for some other reason, the two professions have always fraternized with each other more than with the sister profession of theology. I say *the* sister profession—for many years, and, indeed, until within our own day, there were only the three professions in civil life. Now sisters, then unborn, are crowding round the family table and claiming as of right a seat at the family board on an equality with the three older sisters. Dentistry, civil engineering, mining and electrical engineering, and the like have ceased to be trades and become professions—like the debutante who adds to the train of her gown, while she shortens it above and “comes out,” these have laid aside the child, and claim to be full grown. And there are others coming.

I can see no reason why that fellow feeling between your profession and mine should not continue; and, on one side at least, increase.

You all know the old story of the Scotswoman who said to her friend, “It’s nae wonner we lickit the French at Waterloo—oor men prayed.” The friend asked, “But dinna ye think the French prayed too?” Her ready reply was, “Nae doo’t—but wha could unnerstan’ them, jabberin’ bodies?” I do not vouch for the theology—but there can be “nae doo’t” that the ability of one to understand another makes for sympathy and harmony.

In the past the terminology of the physician was not difficult—at least, anyone with a little knowledge of Greek and Latin could easily follow it—the language of the law was indeed derived in large part from the Latin, but with the most extraordinary perversions from the original and classical meaning. The other day, at a meeting of the Bar of one of the United States I told them that I looked upon myself as a brother: their terminology was familiar, and especially their Latin; and I added

“If I find myself in a body of men who pronounce Latin correctly and according to quantity, I may be amongst scholars, but I know that I am not amongst common-law lawyers.”

There were in the old law many terms which were used in what anyone but a lawyer would call a non-natural and certainly a wholly technical sense. Let me tell you a story. A doctor and a lawyer were disputing about their respective professions, and the doctor particularly found fault with the language of the law. “For example,” said he, “who can understand what you mean when you speak of ‘levying a fine’?” “Oh,” said the lawyer, “no doctor can be expected to understand that, for it is equivalent to ‘suffering a common recovery.’” I do not wonder that that story has fallen flat; no one who has not studied the old law can even understand the language—at a dinner of lawyers, the story is always a brilliant success.

Now all that mystery of the law is about gone—our laws are becoming simpler and so is our language—for the intricacy of the old rules is being substituted common sense. Except in real estate, there is not much that a layman cannot follow and understand.

The very opposite is the case in medicine; the microscope has revolutionized not only the principles, but also the nomenclature. Not many years ago Huxley could say that the student of medicine should put two full years at the beginning of his course on the study of anatomy and physiology alone—in anatomy to such an extent that he *knew* it, not simply that he could recollect if he had time, but so that if he were waked up in the middle of the night and asked he could immediately answer (because he knew his anatomy like the multiplication table) any question on any bone, muscle, nerve, vessel or tissue in the human body. Now, I venture to think, no one would advise so much time to be taken up even in anatomy and physiology when so many other things are to be learned—and if not known, at least known about. No one cares nowadays for the marking on the body of the Spanish Fly, and a teacher of materia medica does not venture into the minutiae even of twenty years ago. The student has not the time—there are more important things to be learned. And the terminology is being developed and extended and changed in the same way—the new wine cannot be contained in the old bottles.

No lawyer can know much about medicine of the present day—though there was nothing to prevent Dr. Rolph in his time being master of both sciences, there are now too many facts to be learned.

I have for some time been preaching the doctrine that a little knowledge of the procedure in the courts should be taught as an integral part of medical education, at least to those who desire it. Some years ago I prepared and delivered to the medical students of the University a series of lectures on "The Doctor in the Courts"—The Doctor as Judge, as Plaintiff, as Defendant, and as Witness. These were received with some approval; and it is perhaps rather a pity that someone has not continued the series. Such lectures should be given by one who is actively engaged in the law—it would be no more absurd for a lawyer who knew surgery only from the books to attempt to teach surgery than for a doctor who had only read about law to try to teach law.

Of course the objection is want of time—and that objection may be valid—but it does seem to me that, considering the enormous importance to the practitioner in medicine of an elementary knowledge, at least, of the law by which he is specially governed, some place might be found for such a study—even if only optional with the student himself.

I cannot but think that the members of the two professions have much in common, much to learn from each other, and should see much of each other. Perhaps some means may be found whereby their intercourse may be increased—it will do both good.

And now I must stop. I fear, as it is, I have talked too long. I conclude by wishing this society and the profession of which its members form a part all the prosperity future years can give. "By their works ye shall know them." The only physician whose name we know in Gospel times was Luke, "the beloved physician." I sincerely hope that all physicians will be called by their patients and the people "beloved," because they have deserved the appellation by their works.