

LEGAL MEDICINE IN EUROPE-THE PAST AND THE FUTURE

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Bu yazıda, tıp sanatının bilinen en eski zamanlardan günümüze mahkemeler ve hukuk sisteminde aldığı yer ve gelişmeler kronolojik bir yapıda aktarılmıştır. Orta çağ, Rönesans ve sonrası dönemlerde tıp biliminin hukuktaki rolü, adli tıp kavramının gelişmesi anlatılmıştır. Avrupa Birliği'nin gerçekleşmesi ile yakın geçmişte adli tıp uzmanlık alanının tanınması ve bu uzmanlık alanı ile ilgili mezuniyet öncesi ve sonrası eğitim programlarının Avrupa Birliği üyesi ülkelerde standartlaştırılmasına yönelik çabalar, konu ile ilgili uluslararası çalışma grupları ve uğraşları, hedefledikleri amaçlar, düzenledikleri temel belgelerin amaç ve içerikleri tanıtılmıştır.

"It may not be feasible to construct an internationally curriculum which will meet the requirements laid down by the certifying and registering authorities in the different parts of the world. This would not however stand in the way of creating an internationally recognised qualification which may prove acceptable; for specialist registration in many if not most parts of the world."

Prof. H.A Shapiro - V th. International Meeting of Forensic Sciences-Edinburgh-September 1972

The "art of medicine as practised by the physician" have permeated and infiltrated the courts and the practice of law throughout known historical times. This influence has been well established on the Continent of Europe for over two thousand years though medical involvement in the law was well enshrined in forensic practice in Chinese, Persian, Arabic and other non-European civilisations well before the Greco-Roman era: for example, papyri relating to the times of Roman Occupation of Egypt refer to the advice and opinions sought from doctors by judges in reaching the more appropriate judicial

verdicts.

By the time that Justinian, Eastern Roman Emperor died in November 565 A D his fame as a legislator and codifier had been well established- his *Codex, Institutiones, Digesta and Novellae* together with the *Corpus Juris Civilis* had consolidated the work of his predecessor Theodosius (346 - 395 A D) who after being proclaimed emperor (while in England), had done his utmost to structure and catalogue Roman Law; Rome was indeed the "**caput mundi**" in terms of its codes of law; *Justinian* incorporated into Roman law matters relating to a medical impute into legal matters

Once established as the official church, the Holy See of Rome particularly, though not exclusively, in matter in which morals and law came together, had a further major impact on medico-legal matters. St. Ambrose of Milan, considered as one of the more eminent "fathers" of the early Church, had a major influence on the thoughts of Theodosius and later emperors. In such ethico-legal matters as insanity, premature births, virginity, wounding, impotence, medical men were asked to testify.

The Church's influence was further established with the convocation of the Fourth Lateran Council by Pope Innocent III in 1215 and the birth of the "Sacred" Inquisition to counteract heresy and with it the establishment of a new system of evidence gathering and forensic procedure; this overruled, on pain of excommunication for priests, the still prevailing antecedent system of trial "by ordeal" The underlying principle was that the judge had to be absolutely sure of the guilt of the accused before he sentenced him, no matter how this guilt was actually established and the confession of the accused to the crime elicited.

Other popes continued to have a major influence

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in the non-ecclesiastical courts. For example Gregory IX (1148-1241) promulgated the *Compilatio Decretalium* which concerned itself with such matters as nullity of marriage, sexual offences, the use of torture and crimes against the person. John XXII (1316-1334) from his stronghold in Avignon pronounced on the criteria by which leprosy should be diagnosed. Gregory XII in 1582 is credited the legal aphorism **"the physician is to be believed in his own medical field"**.

These innovations transferred quite imperceptibly from church and Canon Law to the Civil and Criminal Courts in the legislatures of most of the European nations which bore allegiance to the Church of Rome and that encompassed most of the European courts. The remarkable exception was that of Great Britain where Common Law and Court system - with the exception of the Coroner's courts - have retained an adversarial rather than inquisitorial system of court procedure exporting this system to its colonies, protectorates, dependencies and Commonwealth.

In the later Middle Ages and during the Renaissance, medical expertise was sought in the courts as required, and it was often those doctors connected with the papacy at the Curia, or to cardinals and other high officials of the church, were deemed to be the persons best suited to assist the courts. As universities consolidated their status and autonomy, the apprenticeship system of learning medicine was supplemented by formal tuition in these seats of learning. *The Medical School of Salerno* in Southern Italy had been well established by the 9th Century; *The Medical School of Montpellier* in France had functioned from 1137. Bologna had a medical faculty in 1156 and gradually all the other universities in Tuscany were endowed similarly. Paris had its separate medical faculty by 1273. In Great Britain medical faculties took a longer period to become established: *Oxford* had a small and indistinguished medical faculty in 1303 and *Cambridge* a medical faculty, of even lesser international repute, in 1350. Most of these court physicians were also monks trained in the current centres of medical excellence through their ability to read Latin; they also functioned as apothecaries and blood-letters.

This tradition appears to have been maintained till well into the seventeenth century. Indeed the seminal work on legal medicine, the nine-volume *Quaestiones medico-legales* - was that written by Paolo Zacchias who was the principal physician of Pope Innocent X and later of Alexander VII; this *magnum opus* was published between 1621 and 1666.

This "ad hoc" arrangement of medical involvement with the courts of law persisted until the various

medical faculties also started to teach Medical Jurisprudence as a separate subject. Chaussier, a prison doctor at Dijon started to teach this subject as a separate curricular entry in 1790; this event was closely followed by the establishment of chairs in the speciality of Medical Jurisprudence by the Universities of Paris (occupied by Mahon), of Strasbourg (occupied by Fodere - closely associated with Bonaparte) and of Montpellier, by the beginning of the nineteenth century. In Edinburgh the first Professor of "Medical Jurisprudence and Medical Police" - with the latter aspect of the subject developing into Public Health Medicine - was established by Royal Decree in 1807 with the subject being taught informally for several years prior to that. Berlin and Vienna also had professors teaching this speciality at about the same time.

Medical expertise was also called for and firmly established as a *sine qua non* in connection with civil matters such as compensation for injuries at work, industrially-acquired diseases, claims in relation to insurance policies etc.. Indeed in most of Europe this aspect of forensic medicine -referred to as "Medicina Socialis"- has often become one of the more prominent aspects of the speciality.

This diversity of interests and court systems, and the autonomous development of medical curricula of each university resulted in a very individual and markedly disparate teaching of Forensic Medicine as an undergraduate and post-graduate speciality in different countries and in different universities. Furthermore as medical advances required that the undergraduate medical curriculum covered newer and more directly clinically-relevant subjects, such subjects as immunology, clinical genetics, clinical biochemistry and molecular biology had to find space in the teaching programmes. One of the consequences of this was that less and less forensic medicine was being taught. This coupled with the increasing realisation that crimes such as in terrorism, drugs and prostitution do not respect boundaries and the increasing incidence of multinational disasters led to Professor Don Luis Frontela Carreras of Seville, Spain to call together in 1986 a meeting of several well established names in the forensic medical field (mostly pathologists), to discuss these matters. A Manifesto was put together and signed by the Seville Working Group (SEVILLE MANIFESTO) on the 6th September 1986, and representations were made to the European Council to persuade them to accept the principles of harmonisation of practice and teaching in this speciality.

One concrete result was this was the so-called Morris document (Doc.633) which formed the basis of a report from the Committee of Legal Affairs and

Human Rights. It was adopted by the Standing Committee on behalf of the Assembly on the 28 th June 1991 in the Forty - Third Plenary Session of the Council of Europe and issued as Recommendation 1159 (1991) "on the harmonisation of autopsy rules " (see Appendix 1).

The Treaty of the European Union which was signed in Maastricht on the 7 th February 1992 by the heads of state and governments of 12 European nations representing 370 million people, has three fundamental aspects the establishment of Union Citizenship rights, co-operation in the justice and home affairs, and the introduction of a common security policy. The treaty also expanded the responsibilities of the European Court of Justice with an ability to impose fines on member states not abiding by its rulings. A central police office (EUROPOL) was established to deal with international drug trafficking, fraud, "money laundering", and other serious international crimes. A central scheme for the evaluation of criminal investigative work was established as well as crime prevention programmes, joint training and research in forensic technology, joint criminal records departments and data bases.

An international organisation known as **TREVI** (*Terrorism, Radicalism, Extremism and Violence International*) has also been established in 1975 and operates outwith the control of the *EEA*, it is also involved with policing co-operation. In addition to European states other countries (such as Austria, Canada, Morocco, Norway, Sweden, USA and Switzerland) attend this organisation as observers.

A cardinal principle of the *European Community*, present from its very inception, has always been the free mobility of labour within its constituent countries and this applies to doctors as to anybody else, and thus there is great scope, and indeed a necessity, for a medical integration within Europe. One of the barriers that has been put forward for the slow progress for this is a certain degree of ignorance as to how the *European Community*, or the *European Economic Area* as it is now known, obtains its advice on medical matters. *The European Commission* (EC) that acts as the European Civil Service as well as its executive body, deals with supplying this advice and drafting proposals for community legislation, which are then passed on to the European Parliament made up of members representing their individual countries elected every five years and are aligned according to political affiliation. The *EC* is composed of Commissioners appointed by the now 15 members states and they are bound by oath to act independently of governments and only in the interests of the *EEA* as a

whole. The *EC* is served by 23 directorates general, none of whom deal directly with health although individual directorates contribute to such health-related matters as research and social affairs. *Directorate General III* has an **Advisory Committee on Medical Training (ACMT)** .

Another tap root of the Commission on matters medical is the **UEMS (European Union of Medical Specialists)** which comprises of about 30 monospecialist sections. These are based on specialities which are officially recognised by at least two thirds of the member states. Unfortunately in spite of very intensive lobbying, Legal Medicine is not constituted as a monospeciality as there is no official recognition by the speciality by the appropriate number of member states; it only has observer status in the Pathology Subcommittee (together with for example Cytology and Neuropathology).

The participation of the Seville Working Party in the Conference held in Perugia entitled *La medicina legale nell'Europa Comunitaria* between the 9-12 th October 1991 led to the drafting of a document considering undergraduate medical tuition in this subject. In Germany the speciality of Legal Medicine is perhaps the strongest in Europe both in relation to its academic and research output, its full contribution to the medical curriculum and the strong association with scientific colleagues within the same departments and institutes of Legal Medicine. Thus through the efforts of our German colleagues, particularly *Prof. Dr. Med. B. Brinkmann* and *Prof. Dr. Med. A. Stak*, a meeting was called together, to which all European Union countries and all signatories to the European Free Trade Association were invited with the individual delegates being nominated by their respective Professional Bodies or Councils. **The European Council for Legal Medicine** was thus born and over the last two years the membership has been consolidated to include representatives from all the countries in the *EEA*. Observers are invited from other European countries so that colleagues not in the *EEA*, and particularly the newer states, are kept abreast of developments.

The established aims of the *ECLM* are :

- the harmonisation of practice in relation to such matters as autopsy, toxicology, mass disaster investigation, training and accreditation.
- the integration of the different forensic subspecialties particularly forensic science and clinical medicine with pathology.
- the closer contact and interaction with the legal specialities and specialists.
- international exchanges at all levels in relation to training, specialisation and research in the spirit of the Treaty of Rome.

- the supply of a well-informed and authoritative mouthpiece to national and international organisations and to politicians for obtaining opinions on matters relating to legal medicine.

Three major documents have been produced by the *ECLM*. The first was the re-edition and restructuring of the Perugia document and it gives the basis for what is thought to be the minimum curriculum of legal medicine that should be taught to undergraduates. The second document refers to

an elementary, concise but comprehensive autopsy protocol which is considered to be the basis on which all medico-legal autopsies should be carried out. The third relate to what are generally considered to be the attributes that would be required of a specialist in Legal Medicine.

The next meeting of the *ECLM* is due to be held in London on the 9th December of this year where newer horizons will hopefully be looked at and more integration and harmonisation are achieved.

Appendix 1

COUNCIL OF EUROPE - Recommendation 1159 (1991)

"On the harmonisation of autopsy rules"

1. The Assembly considers it a necessary practice for autopsies to be carried out in all Council of Europe member states establish the cause of death for medico-legal or other reasons and to establish the identity of the deceased.

2. As the mobility of the population increases throughout Europe and throughout the world, the adoption of uniform guidelines on the way autopsies are to be carried out and the way autopsy reports are to be established becomes imperative.

3. This is especially so in the case of mass disasters, whether natural or not, where they may be several hundreds of victims of numerous nationalities.

4. Moreover, it is believed that autopsies should be carried out in all cases of suspicious deaths or where there are doubts as to the cause and that, if done systematically, they may more easily bring to light illegal executions and murders perpetrated by authoritarian states.

5. Internationally recognised and applied autopsy rules would therefore contribute to the fight to protect human rights, especially such human rights as the prohibition of torture and ill-treatment, and the right to life. Here, the Assembly welcomes the fact that the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has been ratified by twenty out of the twenty-five Council of Europe member states.

6. The Assembly recommends the following to the Council of Ministers:

i. Promote the adoption of harmonised and internationally recognised rules on the way

autopsies are carried out and the adoption of a standardised model for autopsies;

ii. Support the proposals that states world-wide formally accept and implement the obligation to carry out autopsies in all cases of suspicious deaths;

iii. Invite the member states to apply the Interpol guidelines on disaster victim identification;

iv. Invite those Council of Europe Member states which have not yet done so to ratify the Council of Europe Agreement on the Transfer of Corpses;

v. Invite the five Council of Europe member states which have not yet done so to ratify the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

vi. Draw up international rules to facilitate the formalities in subparagraphs 6 i., ii., iii., iv., and v. from the administrative (transport, crossing of borders, police, etc.) or legal points of view.

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