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LEGAL MEDICINE IN THE UNITED STATES

OLIVER C. SCHROEDER, JR.*

Legal medicine in the United States has come of age. The influence of medical science in our technological society has grown dynamically. Law searches for ways to work with medicine for the benefit of all. Two forces are currently affecting the relationship between medicine and the law, the explosion of human knowledge in the health-science area, and the implosion of human values in the individual citizen.

In the former category, the quantity and quality of medical knowledge available for the pursuit of justice in our civilized society create a problem of special dimension. It may be fairly stated at this time that medical progress has created more problems for our legal system than it has provided solutions. The failure of medical and legal education to provide adequate interdisciplinary instruction to their students is a primary cause of this. Educational commitment must be the answer. A further contributing factor to medicine's overriding effect on law lies in the complexity of medico-legal matters which challenge the capacity of the common man to comprehend. In an adversary system where the layman jury serves as the decision-maker, medical science has outstripped citizen wisdom. The need for specialized decision-makers cannot be overlooked if the health sciences are to be best utilized in the administration of justice — both civil and criminal. Our goal must constantly be to use medicine as a source of truth in the daily administration of the legal process.

In the latter category, the ethical and moral values in each individual have generated a crisis in humanity. What is human life? Who controls it? How do we measure medical acts with the desired social values of the individual citizen?

In basic terms, the integrity and dignity of an individual person confront the safety and order of the whole community. To maintain the scales in some degree of balance is today's great challenge in legal medicine.

Certain specific areas place graphic emphasis on this balancing process. The criminal law segment draws first attention. The blood alcohol level of a motor vehicle operator is one crucial matter. Public safety demands the removal of a drunken driver from

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the public highway. The lives and limbs of others must not be jeopardized. Punishment for the crime has been law's traditional response. Compulsory extraction of blood by the sovereign state to determine the blood alcohol level, to use the results as evidence for criminal prosecution, and to convict the accused have been sanctioned as valid. This invasion of the physical integrity of a citizen is not to be taken lightly. Perhaps the better procedure would be to use the civil process — license revocation or suspension for the intoxicated driver. Such a civil remedy, without criminal prosecution, is possibly one means of assuring the individual's self-protection from medical invasion of his body for the purpose of criminal prosecution.

Another possibility is the withdrawal of the criminal sanction for a physical condition, such as drug addiction. Narcotics users thus become civil health problems rather than being considered guilty of criminal behavior. These civil procedures for resolving the intricate personal health and public safety conflicts are now rapidly emerging. It is not incorrect to predict that the cumbersome criminal procedures, which at best provide only questionable answers to health problems, are yielding to civil processes controlled by medical techniques for health purposes.

One final example of the slow but sure withdrawal of the criminal process and the increase in civil procedures may be noted in the mental disability area of criminal law. "Not guilty by reason of insanity" now means more than a criminal prosecution defense. This plea is beginning to recast the whole mental health apparatus. The mentally ill person in a criminal situation is not a criminal with social responsibility, and therefore, liable for punishment, but rather he is becoming a patient having a mental illness with the right to treatment from the community he allegedly wronged.

Second attention is given to the medical practice segment of legal medicine. Therapeutic abortion, birth prevention, sexual sterilization and artificial insemination are matters of old concern with new significance today. To control the next generation through medical techniques imposed on the present generation presents personal and community health problems of devastating proportions. Religious and political implications are immense. The sanctity of the family plus the impact of economic, social and racial factors on these medical procedures have generated legal battles in legislative halls and judicial tribunals. Unfortunately, legal medicine today cannot provide definitive solutions to these problems.

A further therapeutic consideration has emerged in organ transplantation as well as disease and life control through mechanical devices, such as the kidney machine. Decision-making in these areas has been exclusively medical as the law seldom if ever has become involved. Tort actions have been most inadequate for any sort of legal control of his type of medical practice. Informed consent for surgical and medical procedures was not within public concern or knowledge. Several misfortunes in heart transplant operations and cancer experiments on human beings have caused the present state of professional excitement found among both attorneys and physicians. The latter are scurrying to redefine medical death and the former are hurrying to create better procedures for decision-making in these scientifically sophisticated medical procedures. The study of the human body is several millenia old. The investigation of the human body began over three centuries ago with Sir William Harvey's work on circulation. Experimentation on the human body is our generation's new effort to make health science more meaningful to public health and private well being. Other values emerge for the individual, however, in the security of his moral and spiritual beliefs and desires in the face of the community's collective demands.

Our third attention is focused onto the challenges of tomorrow. The greatest of these is the replacement of the natural or organic design of living matter by human or technological design of living matter. Domestic animals and hybrid flowers are man-planned and man-made. We are on the threshold of planning and making human life. Transplanting a heart or a brain is therapy for abnormal conditions. Regulating the genes and controlling the chromosomes involves the design of new human beings. By what criteria do the medical manipulators perform? How are decisions to be made regarding sex, physical stamina, and intellectual power of the planned being? Should society be concerned as a public matter or must the family and individual alone decide as a private matter? Are community health and individual well-being the sole concerns of only physicians and patients? If society is to enter the design process, law must provide the means — procedurally, in a just decision-making process, and substantively, in fair and equitable rules of conduct. Only thus will the eternal challenge to balance the needs of society and the integrity of the individual be held in balance. Such tension in social affairs is vital. It secures the good life for the person and the civilized life for the community.