April 1933

Possibilities and Need for the Development of Legal Medicine in the United States

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BOOK REVIEWS


This Bulletin of 135 pages contains a careful analysis by Oscar T. Schultz, M. D., of the findings of a committee on medico-legal problems which was organized in 1926 under the chairmanship of Dr. Ludwig Hektoen. Its contents are of such importance that they should be studied by every physician and lawyer. The following points are set forth in the Bulletin, and carefully derived data with references to documents and to official reports from various American states and cities are presented as the basis for the conclusions and recommendations finally reached by the committee.

It is stated that crime is the most costly of American activities. The results of crime together with the efforts of society to deal adequately with it cost the taxpayers more than the total bill for education. Yet our understanding of it is inadequate, and our efforts to grasp its causes and to produce remedies for it are scattered, visionary, and guided by but little of the sagacity that marks practical effort in the general field of science. Here is a problem of equal interest to both law and medical science, and yet the committee is forced to record that both law and medicine are apathetic to the subject and content with the futile methods of our ancestors. The laity, as a consequence, is relatively indifferent and unenlightened.

But hopeful signs are appearing. For instance, the medico-legal committee of the American Bar Association in 1931 recommended that criminologic institutes be developed in each of our states. They urged that the cooperation of the American Medical Association be solicited in this endeavor.

Our coroner system was inherited from the old English law and was originally instituted chiefly to look after property found on the bodies of dead men who were supposed to have been killed by unfair means. The coroner today is generally thought to be an expert appointed by the state with full power to investigate every death and satisfy himself both as to the cause of the death and the presence or absence of crime connected with it. As a matter of fact, in most cases the coroner is inexpert; also popular
feeling, as reflected in our state laws, so limits his activities that he often amounts to little more than a rubber stamp for recording the loose gossip of the neighborhood regarding a death. It is pointed out that coroners' records are in average cases of less value than the medical records of our lower class hospitals. Excepting those in a few of the more advanced states, coroners are not allowed to investigate a death unless there is such obvious evidence of foul play that little doubt remains to be cleared away.

The vagueness of the laws in most states is reflected in the phrases used by legal authorities to define the occasions on which the coroner is to act. We find such expressions as:

"If the death was surrounded by suspicious circumstances;"
"If the coroner deems it is necessary;"
"If there is any reason to suspect a criminal responsibility;"
"If the death was not due to 'natural causes';"
"Where death is definitely believed to have been caused by casualty, violence, or undue means;"
"The coroner has jurisdiction in cases where death is supposed to have been caused by, etc.;"
"If there is a reasonable ground to believe, etc."

The coroner's function is not definitely either scientific or legal but is a sort of politico-medico-legal mongrel. "If the coroner deems an autopsy necessary", he is free to call a physician to make the examination, and all too often he selects a physician who is inexpert in pathological work. The Bulletin notes that law often assumes that any physician is as expert as any other.

The committee emphasizes the importance to the public of having the cause of death definitely known in every case. The magisterial function of getting evidence as to whether or not foul play occurred, of course, must be fulfilled. But if our vital statistics are to have value in conserving the public health, as by limiting contagious and eliminating preventable diseases, the actual cause of death must be fixed beyond all guesswork whenever death occurs. If this were done, incidentally a large number of deaths due to crime would become known, which now go undiscovered.

Under the ordinary coroner system, when no physician attended the deceased before his death, the coroner is free, if he so elect, to "suppose" that nothing amiss occurred and to pay no further attention to the matter. In such cases the recorder of
vital statistics, often without any medical investigation, enters "heart failure" or such other diagnosis as he sees fit.

The reason for the present hesitation and ambiguity regarding the coroner's function is discussed in the Bulletin. It grows out of the understandable sentiment of relatives regarding the sanctity of the bodies of the dead. The sacredness of the corpse causes law to overlook crimes; for instance, where relatives or others have administered poisons, or where homicide or suicide was committed so skillfully as not to leave telltale marks.

Some states have gone far toward correcting the futile coroner system by separating the medical from the magisterial functions of the coroner, and both from politics. The state or county attorneys become responsible in these states for determining after a death whether reason exists for a medical examination into the cause. If there is such reason, the attorney is required by law to order a medical expert to examine and report. This expert is a state officer and is called the medical examiner. He is appointed by the state, not elected by popular vote. He must be a man of such scientific ability and personal integrity that he can be trusted by the people to discover and reveal the facts. The New Jersey law, for instance, demands that the medical examiner investigate every death that occurs suddenly during apparent health, that occurs when no physician had been in attendance, or that occurs within twenty-four hours after the patient's admission to a hospital. Most of the New England states and New York City also have instituted this system.

In Germany and other European states, law avails itself of the best possible service from medical science. As compared with the system used in England and America the continental medico-legal institute is free from most of the incumbrances due to outworn traditions. It brings together the factors in medical science and university organization which are best adapted to serve law by deriving scientific truth. In these institutes a director and a staff of expert physicians are chosen by the state with the single objection of establishing a bureau equipped with personnel and apparatus capable of investigating any medical problem referred to them and of giving an unbiased report thereon. The director and staff must be men of integrity and expertness to the degree required in the judges of a supreme court.

Attention is called to the appropriateness and feasibility in the United States of developing medico-legal institutes of this de-
gree of trustworthiness in connection with particular American universities.

At present our courts feel under obligation to investigate and settle problems of medical science according to law-court methods. They tolerate a befuddling procedure by which "expert witnesses" are hired for the very purpose of clouding the scientific issues, and the testimony is taken in courts under the worst possible conditions for judicious scientific thought.

The same evils which have rendered futile our present coroner system would easily nullify the efficiency of a medico-legal institute in this country unless the institute could be shielded from the influence of politicians; but once installed in the proper way, institutes of this kind would remove most of the evils of the present medico-legal system.

This Bulletin deals fully with the evils of the present procedures in courts regarding insanity. It points out the futility of "battles of experts". It takes into account the common practice of conspiracy between lawyers and clients to gain mitigation of punishment for sane criminals by convincing the jury of the criminals' insanity. The basic evil of our present system rests upon a misapplication of the just principle that a defendant has a right to introduce witnesses even regarding questions for which the state has already provided adequate machinery for determining the answers. But it is made clear that the state in solving such problems as that of insanity must provide machinery so efficient that courts and juries will come to rely upon it, and thus be in a position properly to evaluate adverse testimony from outsiders.

After pointing out the futility of the old expert witness system, the Bulletin describes in detail the excellent systems that are now in use in several of our states. Of these, the one in Massachusetts is a good example. In the Massachusetts system:

(a) Any suspect may be committed by the court to a psychopathic hospital for examination, or the State Department of Mental Diseases may be required to send an expert to the prison to make the examination;
(b) but the Department of Mental Diseases must be notified by the clerk of the court and must make a report in certain cases, viz., when a prisoner is charged with a capital crime, when there is an accusation of felony after he has already once been convicted of felony, when arrested after having
twice or more often been indicted for any offense, and in the
case of any prisoner who is convicted and sentenced to im-
prisonment for more than thirty days.

The tendency in the more advanced states is to ordain that as
a **matter of routine** the mental status of certain types of prisoners
must be investigated by a psychiatric expert. This expert is
selected by the state on the basis of scientific ability and moral
integrity. He is provided with assistants and all the necessary
machinery for thorough investigation. His report is then avail-
able for the court and for the attorneys both for the state and for
the defense. The best practice is distinctly tending toward the
removal from both the court and the jury of all procedures for
the determination of the mental status of a prisoner. Questions
of sanity must be determined by medical science in advance and
given to the court as facts upon which the legal decision of the
court is to be based.

This Bulletin points out the ease with which a bureau of ex-
erts, not only in psychiatry but in other branches of medical
science, could be instituted in every American state. The courts
of each state would then have readily available a means of de-
termining scientific matters which the courts themselves know best
are not within the province of their own expertness.

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**GOD IN THE CONSTITUTION.** By R. Kemp Morton. Nashville:

Eddying out of the flood of case-books, treatises, and period-
icals comes this little volume whose thesis is to answer "the charge
of political atheism and infidelity (that) has been lodged against
the Constitution of the United States." It seems that "the basis
of this charge is the absence from the document of the name of
God and of a formula recognizing his existence and the obliga-
tions of our people to him for the blessings which all citizens and
denizens of our country enjoy." The object of the book is to show,
by an historical summary, that the charge is unfounded and
that God (meaning orthodox Christianity) is in the Constitution;