

HIPPOCRATES AND NATURAL LAW

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ABSTRACT

For 2500 years, the ethics of medicine has been based on the Hippocratic Oath. This is a deontologic (moral imperative) virtue based ethic. It acknowledges a basic natural law morality. With the Enlightenment, and particularly since the Geneva Convention (1948) and the Belmont Report (1978) there has been a shift to a more autonomous and ultimately a utilitarian based ethic. There has been a transition away from the natural law foundation of medical ethics. It is the premise of this review that this shift is unfortunate and detrimental to medicine and ultimately to the patients we serve.

INTRODUCTION

Medicine, as we enter the 21st Century, confronts severe problems. Some have to do with third party payers, some with government, and some with technology. There is also a morale problem as more and more doctors are retiring early and leaving medicine. Many of these difficulties are beyond our control, but the latter one is not. We suggest that the Hippocratic code can save medicine. The Hippocratic ethic honors the universal healing covenant between a competent physician and a sick human person. This relationship has been diminished in our culture. We will explain.

Humans, unlike other animals, have a moral sense. That is, they know that some behavior is acceptable and other actions are wrong (eg: theft, murder, or lying). In the broadest sense, they recognize the human consensus about rightness and wrongness in human behavior. This acknowledgment is synonymous with natural law.

Ethics, another term for the practical application of natural law, could be said to have been best articulated by Aristotle in his "Nicomachean Ethics." Even before Aristotle, the Decalogue, as described in the bible, was a basic ethical guideline. It also forbids theft, murder, and lying. In general, there is a commonality of the ethical codes of the great civilizations and religions. This suggests that the principles of right and wrong are written in the hearts of all men. In other words, it is part of human nature.

However, natural law theory changed in the West with the Enlightenment and has become utilitarian and relativistic. The emphasis on individual rights and autonomy at the expense of an external objective natural law, was driven by, among other things, the Reformation and the rise of the nation states. This was a direct result of the Cartesian "turn to the self," or individualism. To put the change in blunt terms: right and wrong were no longer objectively given or intuited. They were now determined by each autonomous individual. Natural law has become, reflecting the will of the majority, positive law, determined by legislatures and courts. The Reichstag declared, by majority vote, that the euthanasia of mental defectives was acceptable in 1934 as did the US Supreme Court by majority vote declared abortion legal in 1973.

There is a parallel in medical ethics. Western medicine has of course developed and changed profoundly over the past 2400 years. But it has been remarkably constant in its ethical principles and traditions. The Hippocratic Oath has been the hallmark of the professional medical code and has remained essentially unchanged until recently.

We will discuss: 1.) medicine and society, 2.) ethical implications, and 3.) the harmful effects to medicine of the change from natural to positive law.

1.) MEDICINE AND SOCIETY

Man, given his material body, is subject to sickness and inevitable death. Every human society has had certain members who were expert in treating sickness. Initially medicine and religion were combined but with the development of Greek science the role of the doctor and priest became separate.^{1, 2, 3}

As an aside, medical admonitions are classified as oaths, prayers and pledges, the oath being the most important. An oath is defined as “a solemn appeal to God or some revered person or thing to witness one’s determination to speak the truth or to keep a promise.”⁴

Most cultures, even, until recently, our own western, have acknowledged a supernatural power higher than ourselves upon whom we are dependant. This, the Hippocratic Oath did. It also acknowledged the debt to teachers and students. The oath’s treatment paragraphs reflect the state of Greek medicine and its belief in a relationship between sickness and the human bodily humors. Dietetics as well as herbs and purgings were treatments to correct humoral imbalances. The oath respects life and forbids abortion and euthanasia. Patients and their families are to be respected, and confidences honored. Finally, should a physician fail in these pledges he was condemned to lose honor and respect.

Before, roughly 1945, practically all medical oaths were made to God, or the gods. The appeal to deities reflected an acknowledgment of a superior referent in as much as nature and natural law transcended human decrees and opinions. Since then there has been a change and now oaths are made to society, mankind, or even to one’s own medical school classmates.⁵

2.) ETHICAL IMPLICATIONS

Returning to our opening theme, ethical implications, we will attempt to tie in the medical ethical tenants of the various medical codes (both Western: Christian, Jewish, Moslem and Eastern: India and China) with the broader concept of natural law, widely defined as this innate human sense of right and wrong. The broad deontological prohibition of murder, lying and theft have their counterparts in medical practice. To oversimplify, we can cite several medical areas for which there is general agreement for these prohibitions. These can be put in positive terms. Medicine universally promotes life (“primum non nocere”), patient confidentiality, and virtue among its practitioners.

There is a commonality of the essential elements of the major medical codes. There are certainly no substantive disagreements. Promote life, relieve suffering, be virtuous, support medical education and guard confidences, are themes that are repeated over the centuries and throughout the world’s cultures.

3.) CHANGE FROM NATURAL TO POSITIVE LAW

The medical oaths are natural law applied to medicine. It is the golden rule or the “ten commandments written in the hearts of men.” The theory of natural law arose in the Golden Age of Greece (600-300 BC). It was perfected by St. Augustine and St. Thomas in the Middle Ages. With the Enlightenment (Rousseau, Hobbes, and Locke) there was a shift to the concept of the rights of the individual as opposed to those of the king. The basis of rights shifted from natural law, still considered the foundation by most, to the will of the people which, through legislative action, now makes positive law. The reliance on higher powers (God) or natural law is diminished.

The Hippocratic ethic was personal and bound the physician to the healing relationship with the patient. This bond does not exist with the autonomous patient, or with society as a whole. The

¹ Garrison, F.H. History of Medicines. Saunders, 1921. p. 72.

² Sigerest H.E. History of Medicine. Oxford U. 1951. p. 168.

³ Major, R.H. History of Medicine. Thomas. 1954. p. 96.

⁴ Random House Dictionary of the English Language. Random House. New York. 1973. p. 992.

⁵ McHugh, PR. “Hippocrates a’la Mode.” Nature’s Medicine, 2:507-509. 1996.

physician's time honored covenant with his/her patient has in essence been vitiated. It's no wonder a physician's morale weakens.

This trend, from a medical oath point of view, crystallized following the World Wars, especially the Second. The horrors of Nazi medical experimentation prompted a review of medical codes. This occurred at the time a world governance was being formed at the United Nations. The League of Nations had been a failure and the UN was to be made stronger. The World Medical Association promulgated the Declaration of Geneva Physicians Oath in September, 1948. The Declaration of Geneva for the first time did not mention higher powers. It could be said to have began the secular era. The Universal Declaration of Human Rights was proclaimed on December 10th, 1948. It did not mention medical oaths. The previous western ethical conceptual domination yielded to a more ecumenical world view to include Moslem, Indian, and Chinese philosophy, the latter two of which had no supreme deity. Natural law was also downplayed.

The Declaration of Geneva, while retaining themes (confidentiality, virtue, patient health) from the Hippocratic Oath, departed in one major area. It had become a pledge and not an oath. In other words it no longer had the moral suasion of an oath. The physician was "to consecrate" his life to the service of "humanity," not to a higher power.

This was a significant change. It reflected the major philosophical shift from natural law to positive or political law. God, or natural law, would no longer be the arbiter of human behavior. Now the will of the majority, through legislation, would prevail. This break from tradition had dire consequences in that it was the Reichstag's positive genocide laws that resulted in the shoah. So also the United States Supreme Court and abortion in 1973. A consistent and firm application of natural law would have prevented it.

Unfortunately this change now pervades Western medical schools. Whereas 50 years ago most students took the Hippocratic Oath upon graduation now less than 50% do. These pledges, that many students themselves now devise, have watered down the previously mentioned tenants, especially the prohibitions against abortion and euthanasia. They oftentimes are directed not to God, but to their fellow students or to humanity in general.

Natural law is the timeless guideline for human behavior, medicine specifically. To shift from natural law to positive law in medical practice is to damage a noble medical ethic that has guided medicine for 2500 years. We should make every effort to prevent this from happening by recognizing our respect for and use of the Hippocratic oath.

Table 1. Essentials of medical oaths

1.) <u>SUBJECT</u>	Who is the witness to the oath?
2.) <u>DOCTOR PATIENT RELATIONSHIP</u>	Covenant between physician and patient.
3.) <u>DO NO HARM</u>	Life is precious. No abortion or euthanasia.
4.) <u>PATIENT RELATIONSHIP</u>	Confidentiality
5.) <u>DECORUM</u>	Virtue.
6.) <u>MEDICAL EDUCATION</u>	Promote advancement of profession.