Introducto

MHy
M

MacAlister, Donald

Introductory address on the General Medical Council, its powers and its work.

Introductory Address

ON THE

General Medical Council

its Powers and its Work

DELIVERED AT THE UNIVERSITY

ON OCTOBER 2nd, 1906

BY

Digitized by the Internet Archive
in 2007 with funding from
Microsoft Corporation

DONALD MACALISTER

M.A. M.D. B.Sc. D.C.L. LL.D

Linacre Lecturer of Physic in the University of Cambridge; President of the General Medical Council of the United Kingdom

MANCHESTER

AT THE UNIVERSITY PRESS

1906

Price Sixpence net.

http://www.archive.org/details/introductoryaddr00macauoft

Manchester University Lectures. No. 5.

The General Medical Council its Powers and its Work

Sherratt & Hughes
Publishers to the Victoria University of Manchester
Manchester: 34 Cross Street
London: 60 Chandos Street, W.C.

MTH
M

Introductory Address

ON THE

General Medical Council

its Powers and its Work

DELIVERED AT THE UNIVERSITY

ON OCTOBER 2nd, 1906

BY

DONALD MACALISTER

M.A. M.D. B.Sc. D.C.L. LL.D.

Linacre Lecturer of Physic in the University of Cambridge; President of the General Medical Council of the United Kingdom

MANCHESTER

AT THE UNIVERSITY PRESS

1906

346632
12. 2. 38.

The General Medical Council

Its Powers and Its Work.

It happens that I have never myself had to listen to what is called an "Opening Address." But I have read a good many, and they have not always caused me to regret my deprivation. At Cambridge and at St Bartholomew's, where I was a medical student, these ceremonial orations were not in favour. At the beginning of the session we met as usual, and set to work at once. I hope that before this hour is over you will not be tempted to wish that the like custom prevailed in Manchester. It may reassure you if I say that I do not propose to offer you a formal exhortation. Time and temperament have precluded me from trying to emulate the eminent leaders of the profession who in past years have discoursed to you from this place. My aim will be humbler and perhaps more practical. I propose to speak informally, but as I trust not loosely, on various matters concerning our common profession and its government with which at one time or another it behoves us all to be acquainted, and about which many mistakes are made—for want of knowledge.

When I was honoured with the invitation to address you at the beginning of a new academic year, I was told that my audience would consist chiefly of medical students and practitioners—"with a sprinkling of intelligent laymen." That information—or warning—had something to do with my choice of a subject. For the General Medical Council has points of interest for students, practitioners, and laymen alike; and my only fear is that I may fail to make them as interesting as they really are. My chief difficulty lies in the misconceptions that exist regarding the Council's powers and its work. I seldom take up either a

professional or a non-professional paper that touches upon medical matters without finding evidence of these misconceptions. Sins of commission—more often sins of omission—are freely laid to the Council's account, of which, from its very nature and constitution, it cannot be otherwise than guiltless. It is scolded for doing what the law says it *shall* do. It is bitterly reproached for leaving undone what the law gives it neither power nor means to do. It is spoken of at one time as the parliament of the profession; yet it has no authority to legislate for anybody, and it cannot make even a by-law for any but its own proceedings. At another time it is scornfully described as a "doctors' trade union"; yet it cannot legally levy an annual subscription, or say a word on the matter of rates of pay, or hours of work, or disputes with employers; it offers no pecuniary benefits or strike-pay, and it *can* be sued in the courts like any other corporation. I venture to think that such a "union" would hardly be thought to deserve the name by the energetic organizers of Lancashire and Cheshire trades.

The Council is, in fact, neither a parliament for making professional laws nor a union for protecting professional interests. It may surprise some of you to learn that when the Council was created, nearly fifty years ago, the declared purpose of the Legislature was not to promote the welfare of professional men or professional corporations—it was not to "put down quackery," or even to advance medical science. The object in view was simply the interest of the public. The preamble of the Act of 1858 consists of two lines only:—

"*Whereas it is expedient that persons requiring medical aid should be enabled to distinguish qualified from unqualified practitioners: Be it therefore enacted . . .*"

The preamble, as you see, recognizes two kinds of practitioners, the "qualified" and the "unqualified." Up to that time no easily-understood line was drawn between the two, and when the public desired to make a choice, they were frequently at a loss. The Act set up machinery

for, as it were, "hall-marking" the qualified practitioner, so that he might easily be recognized when his services were required. But the public were left free then, as they are free now, to seek "medical aid" from the unqualified practitioner if they like. And the unqualified practitioner was left free then, as he is free now, to practise for gain among those who choose to employ and pay him. He was forbidden, under penalties, to pretend that he was qualified, by taking a title he did not possess; he might not use the courts for the recovery of his charges; he could not give a valid certificate of sickness or death: but except for these and a few other not very inconvenient disabilities, he was untouched by the new law.

On the other hand, the "qualified" men, as a set-off to their new legal status and official recognition, were subjected to a new central control, educational and disciplinary. They obtained no monopoly of practice among the public in general. They were afforded no special "protection" against the competition, not always scrupulous or insignificant, of the uncontrolled unqualified practitioner. Indeed, for a time those of them who were educated and licensed by medical schools and corporations were in a sense exposed to greater competition than before. For at the outset all who claimed to have practised before a certain date in 1815, whether they had been educated or not, were enrolled among the qualified. In this way a number of elderly practitioners, who had no licence or diploma whatever, were accorded the same legal status as the rest, and practised side by side with them. These of course have now disappeared; but their existence must not be forgotten when we are considering the so-called "privileges" of the profession which were conferred in 1858.

The qualified practitioners might fairly have claimed that it would be good for the public, as well as for themselves, if monopoly of practice, and protection against the competition of the untrained, had been conferred upon them. In other countries, and in other parts of the King's

Dominions, the restriction of practice to the qualified is with general consent and approval enforced by law. Any unqualified person who habitually and for gain practises or holds himself out as practising any branch of medicine is liable to severe penalties. But in these days of "Christian Science" and "Nature Cures" and "Bile Beans," it requires a good deal of optimism, and some resolute ignoring of the signs of the times, to believe that in this free (and easy) country legislation to that effect is either probable or possible in the near future.

The result, foreseen or unforeseen, of Acts passed since 1858 has in fact been rather the other way. An unqualified *person* can be restrained from using a title, such as "physician" or "dental surgeon," which implies qualification and is reserved by law for qualified men. But if he takes to himself six other persons as unqualified as himself, and registers the compound individual as a joint-stock company, it is held that, in England at least, he can call himself what he likes. He is no longer a "person," but a corporation—with the usual and highly-convenient negation of soul or body. Thus the distinction set up by the Medical Act is blurred in the public mind by the operation of the Companies Act. The public may well be excused if they think they are dealing with qualified practitioners when they seek advice at the establishments, legally incorporated, of "Dr Galen Aesculapius Jones, Limited," or "Professor Smith and Co., Consumption Specialists," or "Tooths, Cash Dentists." Strenuous efforts have been made, within and without Parliament, to get this remedied, but so far without much success. The Legislature is in fact very tender towards unqualified practitioners of every kind—so long as they do not presume to practise *Law*. The lawyers have seen to it that *that* profession at least is sacred.

I have mentioned that in 1858, when medical men were first officially registered, every one who claimed to have been in practice some forty years before was enrolled, even though he held no diploma or other certificate of com-

petency. The vested right even of the unqualified was thus carefully respected. A similar thing happened twenty years later, when dentists were enrolled, and to-day the *Dentists' Register* is made up, to the extent of nearly one-half, of men with no other qualification than "in practice before July 22nd, 1878." Four years ago, as the outcome of a bitter cry for the better regulation of midwives, whose want of skill and cleanliness brought suffering and death to countless mothers and infants, the Midwives Act was passed. Again all women went on the roll who applied, and had been in practice for a year—trained and untrained together. Those who did not choose to go on the roll were allowed two or three years more during which they could use the title of midwife, though unenrolled or uncontrolled. And not until 1910 will it be illegal for a woman, who is not enrolled and has no certificate of training, to practise for gain that perilous office, perilous, I mean, to those who place their lives in her hands.

All this care for the unqualified can, I have no doubt, be excused on political and legal grounds. That I am not concerned to deny. I mention it to illustrate the general temper of our lawgivers, and of their constituents also. We all of us in our hearts incline to distrust the rule of the expert, and we rather admire the amateur. Most of us flatter ourselves that in one way or another we are something of amateurs ourselves. It is more than a half-truth to say that England would rather be free, free even to let itself be injured or befooled, than under compulsion to be sober, or healthy, or secure. And so long as this mood prevails, I do not see much chance for the Bill that is to "put down quackery" with a strong hand. Parliament may go so far as to "distinguish" the trained from the untrained practitioner; it will then leave you free to make your choice—at your own risk.

The instrument which Parliament set up for the purpose of marking the distinction is called the *Medical Register*. And the making and keeping of this Register is entrusted to the *Medical Council*. On the *Register* are placed the

names of those who have passed certain tests of professional fitness. These are called *Registered Practitioners*, and these alone the law declares to be duly or legally qualified. The Council has to see that the tests of professional fitness actually applied by the Examining Bodies to aspirants for registration are "sufficient." The tests must ensure that those who pass them possess "the knowledge and skill requisite for the efficient practice of medicine, surgery, and midwifery." The Council has also to see that no registered person, who by crime or misconduct has become unworthy of the legal status which registration confers, shall remain on the *Register*. In other words, the two great functions which the Council in the public interest discharges are, first, to prevent the unfit from gaining access to the *Register*, and, secondly, to remove the unworthy from it. Except as to a few subsidiary matters, such as the preparation of the *Pharmacopœia*, the control of Diplomas in Public Health, the scrutiny of the Midwives' Rules, and the like, all its powers and all its work in relation to the medical and dental professions have reference to these two functions. It is a Council of *Education* and a Board of *Registration*.

It is a Council of Education, but it neither teaches nor examines. It cannot lay down a code or curriculum compulsory on all medical students. It cannot inspect a single medical school. Its statutory powers are indeed strictly limited. It can order the visitation and inspection of the various examinations held by Universities and Colleges in the United Kingdom, for the purpose of testing candidates for their respective medical degrees or diplomas. And it can require from these bodies information concerning the course of study, and the age of candidates, which they prescribe. If, from the inspection of the examinations or the information supplied as to the curricula, the Council comes to the conclusion that either are "insufficient," it has no power to disallow them or to order that they shall be amended. It forwards its report to the body concerned, takes note of any observations the body

may make thereon, and if it is still convinced that the training or the test is "insufficient," it brings the question before the Privy Council.

In this and in other matters the Council is in close administrative relation with the Privy Council. If in anything the Medical Council neglects its duty, the Privy Council may formally direct that the duty *shall* be performed, and may in default itself perform it. In the case before us the Privy Council has power to supplement as well as to supersede. It can do what the Medical Council is unable to do. If the Privy Council sees fit it can declare that an "insufficient" diploma shall be no longer recognized as legally registrable; and, if circumstances alter, it can rehabilitate the diploma and make it valid again.

The Medical Council is also a Board of Registration. In fulfilment of this function, partly by the force of necessity, and partly in virtue of the interpretation of the law by Judges, it has become a professional Court of Justice, a domestic forum for the trial and determination of grave charges brought against registered practitioners in their professional capacity. By successive judicial decisions it has been laid down that in its procedure the Council, sitting as a Tribunal, must as nearly as possible follow the forms and rules customary in other courts. But it has no authority to compel the attendance of witnesses, to administer oaths, or to call for the production of documents. It has only one judgment to give when a charge is proved to its satisfaction, namely "guilty of infamous conduct in a professional respect"; and only one sentence when judgment is given, namely "erasure from the *Register*." From this sentence and judgment, given after proper inquiry and without malice, the High Court of Justice has pronounced that there is no appeal. In the earlier years of the Council's life its decisions were frequently called in question before the ordinary courts of law. The results were on the whole fortunate, for while its actual findings as a professional court were never reversed, the judgments

delivered on these appeals not only defined, but in effect expanded, the jurisdiction of the Council. They laid down its procedure, they interpreted broadly the meagre language of the Statute, and they settled beyond dispute the finality of its decisions on all causes within its competence.

All the Act says is: "If any registered medical practitioner shall be convicted in England or Ireland of any Felony or Misdemeanour, or in Scotland of any Crime or Offence, or shall after due Inquiry be judged by the General Council to have been guilty of Infamous Conduct in any professional respect, the General Council may, if they see fit, direct the Registrar to erase the name of such medical practitioner from the *Register*." In 1863 the Lord Chief Justice and his colleagues of the Queen's Bench laid it down that this clause "makes the Medical Council sole judges of whether a medical practitioner has been guilty of infamous conduct in a professional respect; and this Court has no more power to review their decision than they would have . . . of determining whether the facts had justified a conviction for felony or misdemeanour under the first branch of the section. . . . The Council is the tribunal to whom the Legislature has left the decision, as being the best judges in the matter, and this Court cannot interfere."

In another appeal Lord Justice Bowen declared that, provided "due inquiry" had been made by the Council, "the jurisdiction of the domestic tribunal, which has been clothed by the Legislature with the duty of discipline in respect of a great profession, must be left untouched by Courts of Law."

Referring to the language of the Statute, Lord Justice Fry added: "'Inquiry,' and 'judgment,' and 'guilt' are all words which express and which are relevant to a proper form of judicial proceedings, and therefore, although this body proceeds by different rules of evidence from those on which Courts of Law proceed, I cannot for a moment doubt that the Council were proceeding judicially; nor can I help adding that the manner in which the Council has

proceeded on this inquiry, as on all other inquiries, shows that the Council are fully aware that they are performing judicial duties, and endeavour evidently to perform them in a very admirable manner."

These and like judgments settled the jurisdiction and the procedure of the Council sitting as a Tribunal. The meaning and scope of the statutory verdict of the Council —"guilty of infamous conduct in a professional respect"— were given by the definition of the Court of Appeal in 1892. "If it is shown that a medical man, in the pursuit of his profession, has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency, then it is open to the Council to say that he has been guilty of 'infamous conduct in a professional respect.'"

I have given these important decisions at length for two reasons. They show, in the first place, the position assigned by the law to the Council's judicial inquiries and the range of its jurisdiction. In the second, they illustrate the process of legal development by which three words in the Act of 1858—"inquiry," "judged," and "guilty"—have inevitably led the Council to become a Court of professional discipline, with duties and powers which were certainly not explicitly set forth in the Statute, if, indeed, they were implicit in the intentions of the Legislature. The guardianship of the *Register* and of its accuracy, then committed to the Council, had in it the potentiality of a wider and weightier stewardship. The Council of Medical Registration had no choice but to grow into the High Court of Medical Conduct; and observe that the development came about as the result of a series of judicial interpretations. A study of the earlier minutes of the Council shows how tentative, how hesitating, how half-unconscious were its first steps towards the assumption of judicial functions. It hardly knew that it was a judicial tribunal *in posse;* it scarcely realized what precautions as to procedure were necessary to make its inquiries "due"

within the meaning of the Act. The course the evolution actually took is, however, exactly that by which the Common Law of England has reached its present form. As Sir Henry Maine (*Ancient Law*, chap. ii) reminds us: "We in England are well accustomed to the extension, modification, and improvement of law by a machinery which, in theory, is incapable of altering one jot or one line of existing jurisprudence. The process by which this virtual legislation is effected is not so much insensible as unacknowledged . . . We do not admit that our tribunals legislate; we imply that they have never legislated, and yet we maintain that the rules of the English Common Law . . . are coextensive with the complicated interests of modern society."

The development of the germ provided by the Legislature has been from within as well as from without. The decisions of the Courts of Law have caused the Council to expand into a recognized and independent Tribunal. Its own judgments in a succession of actual cases, decided by it after due inquiry, have gradually built up a body of precedents and rulings which may fairly be described as forming the Common Law of Medicine. I said at an earlier stage that the Council had no power to legislate or to make by-laws, except for its own proceedings. That is strictly true of the Council considered as an enacting body. It is equally true of the ordinary Law Courts; we do not regard them as parts of the Legislature; they do not frame new statutes. But, as we have seen, they do in effect *develop* law if they do not claim to make it. And the developed law may be, and indeed is, more comprehensive and more adaptable than the statute law, of which it professes to be no more than the interpretation.

The Judges' definition of professional misconduct, like their definition of the province and jurisdiction of the Council itself, contains within it a principle which is in essence evolutionary and progressive. Whatever may be reasonably regarded as disgraceful or dishonourable by professional men of good repute and competency, is "in-

famous conduct" in the technical sense. As the standard of professional competency becomes higher, as the conscience of men of good repute becomes ethically more exacting, so the area within which the Council can exercise its discipline expands. And thus it has come to pass that practices which, forty or fifty years ago, were so common and so lightly regarded that they excited little notice and less reprehension, are now repugnant to the general sense of the profession, and are sternly repressed by the Council. I may take two instances to illustrate my point.

Formerly, in certain parts of the country, it was customary for a qualified man in large general practice to employ a number of unqualified persons as his assistants. These, as they acquired a certain amount of rule-of-thumb experience, were gradually entrusted more and more with the sole care of patients. The practitioner sometimes did not see the patient until it was time to sign a death certificate in order to avert an inquest. Individual cases of gross abuse were one by one brought before the Council and condemned. Others, in which various forms of evasion were attempted, followed upon these; and as they arose these ingenuities were severally met and dealt with. At length it was made clear to those who clung to the evil tradition, that their practice was too dangerous to be profitable, and that the "unqualified assistant" must go. Having accumulated a sufficient body of experience regarding the mischief which had to be eradicated, the Council summed up all in a "warning notice" respecting the professional offence of "covering." All qualified practitioners were notified that the abuse of their qualifications, whereby an unqualified person was enabled to treat patients as if he were qualified, under "cover" of his employer, was in its nature fraudulent and dangerous to the public, and that such an offence rendered them liable to be judged guilty of infamous conduct. The result was remarkable. Unqualified assistants were dismissed wholesale, often no doubt at the cost of some hardship to individuals, but in the end for the good of the public and of

the profession alike. The evil, from being almost endemic in particular districts, became sporadic, and is now fast passing away. The general conscience, which tradition had somewhat dulled, is now alert. Cases of "covering" by medical men have almost ceased to be reported to the Council; though in the dental profession, which is still in the stage of transition, they are somewhat more frequent.

The "warning notice" was not in form a law or regulation made by the Council; it was merely a condensed statement expressive of the successive judgments of the Court. But it served its purpose, and its authority has not been impugned.

More recently the practice of issuing objectionable advertisements, or of employing or sanctioning the employment of canvassers, with the object of procuring patients, was brought before the Council in connexion with particular flagrant cases. Each case had to be dealt with on its own merits—or demerits. The character of the objectionable advertisements varied; in some cases the canvassing or touting was direct; in others it was carried on through the agency of a club, or association, or dispensary. Sometimes the case was strenuously fought, in others the accused practitioner preferred to discontinue the practice complained of, and submitted himself to the clemency of the Council. Once more when the time was ripe, and the various forms assumed by the mischief were fully apprehended, a "warning notice" was issued as before. This pointed out the public detriment and professional discredit attaching to such unworthy methods of attracting practice, and gave notice that practitioners who employed them, or sanctioned their employment, were liable to the penalty of erasure from the *Register*. A similar notice had already been issued to dentists, as the result of a series of cases duly heard and determined. In this instance the Council had the support of the Court of Appeal, given in certain important judgments relating to an advertising dentist of some notoriety.

These examples—and I could add to their number—

illustrate my statement that even with its apparently limited powers as a Court, and notwithstanding the apparent inadequacy of the Statutes that govern it, the Council does in fact formulate, and by formulation makes explicit, fresh applications of the law to the growing complexity of modern conditions. And, what is more important, in doing so it carries with it the consensus and approval of "professional men of good repute and competency." The average conscience is quickened, and what was once tolerated is in the end repudiated and discountenanced.

The experience of the Council on the judicial side of its work has been singularly paralleled on the educational side. There, too, though its positive *powers* seem meagre and inadequate, it has not been prevented from developing an *influence* which is real and potent.

Its powers only enable it to visit and inspect examinations, and to call for information as to courses of study: it is not authorized to prescribe or to amend either. It cannot itself disallow an "insufficient" curriculum or an "insufficient" test: it can only report its opinion to the Privy Council. These are the limits imposed on its educational action by the terms of the Medical Acts, and at first sight they are narrow enough. But in practice they have proved to be more efficient than they seem in theory; and the "long result of time" has gone far to make them adequate for the purpose. This result has been reached, as in the other case, by a gradual process of evolution, and by the exercise of moral as distinguished from legal pressure. It is dependent in great measure on three factors, one the constitution of the Council itself, another the loyalty and conscientiousness of the teaching and examining bodies, and the third the publicity of the Council's minutes and proceedings.

Let me say a little first about the Constitution of the Council. As you all know, the testing of students in medicine, and the granting, to those who pass the test, of medical diplomas and degrees, have been entrusted by

the State to Universities and to certain professional Colleges and Societies within the United Kingdom. Some of the Universities are of great antiquity and repute, like Oxford and Cambridge; others are modern, and filled with high ambition, like Manchester and Birmingham. The professional Colleges of Physicians and Surgeons are all of considerable age, with traditions of service to the cause of medicine that extend over centuries. Altogether there are now twenty-four bodies which are legally entitled to test candidates and to confer diplomas. In England and also in Ireland two of the bodies, and in Scotland three, have combined for examination purposes to form three Conjoint Boards, one in each division of the Kingdom. But for all other purposes the bodies preserve their autonomy, and make their own regulations. To the fifteen Universities it is probable that a sixteenth, namely the University of Wales, will shortly be added.

Each of the twenty-four Licensing Bodies, as they are called, appoints a member of the Medical Council. Five members are appointed directly by the Crown, on the advice of the Privy Council, and five members more are appointed by direct election, under a universal suffrage, by the registered practitioners resident within the Kingdom. The total number of members is thus at present thirty-four. Of these, fourteen only are required by law to be medical practitioners themselves. The Crown and the Universities may appoint lay men if they like. They have not chosen to do so; but the freedom reserved to them illustrates what I have already remarked on, namely, that Parliament in creating the Council had in mind the safeguarding of general public interests, not of professional or scientific interests. Indeed, it was at one time proposed that one of H.M. Secretaries of State should be the President of the Council. One of my predecessors, Sir Henry Acland, used to maintain that the Crown should appoint to the Council lay members of the House of Lords, such as the late Earl of Shaftesbury, as being persons of knowledge and ex-

perience of public affairs who were independent of transitory politics (*Royal Commission Blue Book*, 1882, page 5). The Peers would, in his opinion, increase the administrative efficiency of the Council, correct its tendency to professional bias, and be always at hand to bring forward in Parliament measures of medical importance. You will see how remote from Sir Henry's mind was the conception of the Council as a mere union of doctors for professional ends. We have travelled a long way from his point of view; whether for better or worse it is not for me to say—at least on this occasion. But the original idea on which his view was based is not without significance, and it survives in this, that in the Universities generally it is not the medical faculty that appoints the member but the academic body, whatever that may be. In my own University of Cambridge, the member is elected by the Senate, *more burgensium*, that is, as the members of Parliament are elected. The Senate numbers over 7,000 graduates in all the faculties, and each has his voice and vote. When I was first returned to the Council I had, like better men, to pass through the ordeal of an election contest.

The five members directly elected by the practitioners of the three countries were added in 1886. In 1882 a Royal Commission had reported as follows: "While we insist that the reason of the existence of the Medical Council is the interest of the public, we cannot but recognize the vital interest of the whole Medical Profession in the Constitution of that Body. It seems to us highly important that the Profession should have full and complete confidence in the Council, and seeing that the governing Bodies of the Medical Corporations, which now elect members of the Council [and which alone, be it remembered, are required to elect medical men] can hardly be said to represent the great majority of practitioners, we think it advisable to give the general practitioner an effective voice in the Body which will be the principal authority of the Medical Profession. We see no reason to

suppose that the members elected by direct representation will be less eminent than those nominated either by the Crown or the [proposed] Divisional Boards" [of the three parts of the Kingdom]. The Commission accordingly recommended that four members should be directly elected, two for England and one each for Scotland and Ireland. The Act, when it came, was framed on a somewhat different basis, and gave three members to England instead of two.

Please observe the main reason alleged for the introduction of the directly elected members: it was "highly important that the Profession should have full and complete confidence in the Council." Exactly the same reason may be assigned for the arrangement, also sanctioned in 1886, by which each one of the Licensing Bodies was granted a separate voice in the counsels of the principal authority. For in their case also it was important that they should have such "full and complete confidence in the Council" as would make them ready to co-operate with it in matters of medical education. The new Act conferred no new coercive powers on the Council. Its numbers were increased, the extent of the qualifying examinations was enlarged and better defined, the scope and method of the inspection to which they were subject were more fully expressed. But the Council as before could only in the last resort report to the Privy Council any deficiencies it discovered. The law in fact contemplated that reasonable uniformity and stringency in the existing tests were to be brought about not by autocratic compulsion but by common action for a common end. To use the language of a recent Bill, "peaceable persuasion in a reasonable manner" was to be the main motive force entrusted to the Council, so far as Medical Education was concerned. Ardent reformers cried then, and have often cried since, for speedier and more drastic powers. But after all is not the method adopted by Parliament characteristically British? "Government with the consent of the governed"; "freedom limited only by necessary checks on the abuses which would destroy the freedom and efficiency of others." These

are general maxims of our statecraft in regard to other departments of our corporate life. And the State thought well to apply them to the regulation of our profession also.

By its new Constitution then, in which (1) the State on behalf of the people, (2) the medical profession itself, and (3) the several bodies which educate, test, and maintain the repute of the profession, possess each of them an effective voice, the Council became better adapted than before for its purpose of regulating the training of medical men. It became in fact a better *Council* of Medical Education. The duty and responsibility of appointing not obedient *delegates* but good *members* were imposed on each of its constituent bodies and sections. Their corporate credit rather than their narrower interest was involved in the selection they made. For the influence wielded by any member of the Council within its walls ultimately depends on his character and capacity as a man among his brethren, and not on the dignity or power of the body which sends him. His personal influence is instantly weakened if he comes burdened with a mandate or hampered by a pledge. He must be a voice, and not merely an echo.

I need not labour this point. Its importance must be obvious. But I would add two remarks before I leave it. However important may be the essential independence of the members considered as components of a Council of Education, it becomes more than important, it becomes vital, when we view them in their judicial capacity. In Scotland the Judges of the Supreme Court are finely described as Senators of the College of Justice. In our medical Tribunal the Councillors must also be regarded, and regard themselves, as for this purpose members not of this or that College, University, or Association, but of a "College of Justice" only. "Clothed by the Legislature with the duty of discipline," as Lord Justice Bowen expressed it, anything like fear or favour, partiality or ill-will, mandate or pledge, becomes more than a defect, it amounts to a disqualification for judicial functions.

And, in the second place, I would bear testimony that during the twenty years which have elapsed since the Constitution of the Council was readjusted, and over which my knowledge of it extends, the electing bodies have been singularly successful in realizing the idea I have indicated. The special gifts of the members chosen have varied, and fortunately varied, as much as their individual opinions and experience; but all have contributed elements of value to the corporate life, and to the corporate character which is its essence. Projects have often been framed for altering the Constitution of the Council, so as to give less or greater preponderance to some fancied "interest" or other. What is always undemonstrated in these schemes is that they will bring about the appointment not merely of *different* members but of *better* members, having regard to the one supreme interest—the interest of the public. It is with this essential question that our people and our Parliament are primarily concerned, and yet this is the very question on which, in my opinion, no clear evidence has yet been vouchsafed.

I have said above that the *Constitution* of the Council was a factor in the development of its educational influence. I have given you a sketch of what the Constitution is. Let me next consider briefly how it reacts upon the Council's work.

As regards education, the principle sanctioned by the Legislature is that laid down by the Royal Commission of 1882. "It would be a mistake to introduce absolute uniformity into medical education. One great merit of the present system, so far as teaching is concerned, lies in the elasticity which is produced by the variety and number of educational Bodies. Being anxious not in any way to diminish the interest which the teaching Bodies now take in medical education, or to lessen their responsibility in that respect, we desire to leave to them as much initiative as possible. In certain matters of general importance, such as the duration of study, and the age at which a student should be permitted to practise, common regula-

tions ought, we think, to be laid down; but we wish to record our opinion that nothing should be done to weaken the individuality of the Universities and Corporations, or to check emulation between the teaching institutions of the country." In other words, competition between a multiplicity of teaching bodies, as such, tends to the advancement of education. The institution which, *caeteris paribus*, affords the most efficient teaching will have the best reputation, and be the most resorted to. The interest involved in the competition is the interest of improvement.

As regards examination, to put it mildly, this interest is not so clear. I put it to the unregenerate instincts of the students before me. If, as they will probably be ready to declare, all examinations are essentially evil, would it not be wise to choose the least? Will not the most popular Examination Board be that which offers the easiest test? If the same hall-mark is impressed on 9-carat gold as on 22, why waste precious metal in working up to the higher standard? Reasoning of this somewhat crude kind commends itself to the natural man, and many of the criticisms that we hear are based on nothing more profound. It takes little account of other facts of professional economics, which are nevertheless of decisive importance. Thus, the supposed hall-mark is *not* the same in the two cases. Examining Boards, no less than medical schools, in the end depend for popularity on their reputation for efficiency. If a Board is notoriously easy-going, not students only, but their teachers, and their parents, and the profession, and the public, know it. The practitioner finds that he can only get a 9-carat diploma from that Board, and he pretty soon learns that he starts on his career with the stamp of a 9-carat man. Conscious as we are of each other's imperfections, we are all sure that our *own* merits deserve more than the minimum of recognition, whether in this imperfect world they receive it or not. And so the easy-going Board becomes the object of resentment instead of loyalty among those it has licensed, and loses not only its public prestige, but the corporate backing and support of

its licentiates. In its own interest the Board has to recognize that it is hurtful, not helpful, to have the reputation of being over-lenient; and I may add, as a matter of statistical fact, that even in older days, before the full operation of this law was observed, the easiest examination was not the one which attracted the most students.

In so far, however, as the *primary* tendency of competing examinations might be regarded as downwards rather than upwards, the State has established a check. It has affirmed the principles (1) that a certain minimum of stringency shall be required; (2) that the minimum shall always be such as to secure efficiency in the practice of the essential branches of medicine, surgery, and midwifery; and lastly (3), that to admit of the gradual rise of the minimum with advancing needs and advancing knowledge, the practical definition of it from time to time shall be left to the General Medical Council with the concurrence of the Privy Council.

It is here that the Constitution of the Council tells in favour of these self-acting—or, as I called them just now, economic—forces which tend to raise the standard of both teaching and examination. Every Board has its member on the Council. The Council informs itself by inquiry and inspection of the actual requirements of each in respect of training and of testing. If it appears, let us say, that England is at a given moment too lax in any particular, and that students are in consequence tempted to pass to England from Scotland and Ireland, the members from these sterner regions are at once on the alert. They are not usually deterred from speaking their minds by any overmastering awe of the majesty of English Universities or Corporations. They have a common interest in urging that the alleged laxity shall be remedied. The English Boards, even if they were united in a solid conspiracy of Saxondom, have only 12 votes out of 34. If the case against them is made out to the satisfaction of the members elected by the Government and the practitioners respectively, the English combination is powerless to prevent the carrying

of a resolution that the fault ought to be amended. And so far as a resolution of the Council can do it, amended it would be. This is an imaginary instance: I don't say that anything exactly like it has ever happened, though, changing "names and numbers," examples not *unlike* it could be cited. I am concerned only to give you what the engineers call a "force-diagram" of the Council's Constitution, as it operates, and was no doubt intended to operate, in questions of the kind.

Unrestricted individual competition, to continue the mechanical metaphor, would as some think make all examining bodies gravitate to the lowest possible position. By bringing all the bodies together, in the persons of their chosen members, round the Council table, the play of forces is so altered that the position of normal and stable equilibrium is now somewhere about the centre of gravity of the whole. The average standard of all replaces the former minimal standard, and the average tends to be that which "men of good repute and competency," having regard to all the circumstances, think reasonable and "sufficient." If it is not so high as some might think attainable, it is a good deal higher than what, without our machinery, would actually be attained.

Suppose now that the Council has passed a resolution for the improvement in some particular of the requirements of one or more of the constituent bodies. The resolution does not come as an order from an autocratic bureau—*sic volo, sic jubeo*. It comes from a Council on which the body concerned has as much voice as any other. It is like the utterance of the International Conference at the Hague, in which all the nations are represented, and in whose proceedings all take a part. You, as one of the nations, may not wholly agree with the utterance: but you feel that you can give it the most careful consideration and even embody it in your own national practice or legislation, without derogating one whit from your proper dignity or sacrificing a jot of your rightful independence. You act on the impulse not of servile submission, but of *noblesse*

oblige. You gave the Council the highest sanction in your power by sending a member to represent you; you would expect the minority to respect its decisions had you been in the majority: you can do no less yourself even if you for once are in the minority."

From the point of view of the Council as a corporate entity, it is also of inestimable advantage that each of its constituent bodies is represented upon it. Its members, in one aspect of their functions, are so many envoys from the Universities and Corporations. Each is in immediate touch with his Governing Body: he is by hypothesis in good standing and influence there, or he would not have been chosen. While he is an envoy *of* the body, he becomes in turn an envoy of the Council *to* the body. From his own knowledge of the course of the discussion, the arguments used, the examples proposed for imitation, he is in a position to explain and commend the Council's decision to his colleagues at home. He can make clear the scope and bearing of resolutions that are not always, I regret to say, self-explanatory.

It is, I am convinced, largely owing to the representation of the bodies upon the Council, and to the potent motives which, with our British temperament, we deduce from that representation, that the influence of the Council with the bodies so far outmeasures its actual powers. The only compulsion to which the bodies have been subject is the internal compulsion of a high self-respect, which makes them unwilling to do less than their compeers for the common good. In a multitude of instances, even this compulsion has been eased of all constraint by the fuller sympathy with the Council's motives and objects which the loyal mediation of its members has induced.

Whatever may have been assigned as the reason for it in past times, the fact is worthy of mention here that during its forty-eight years of existence the Council has only once had to express its final verdict of "insufficiency" with respect to any one of the licensing boards, and to report that verdict to the Privy Council with a view to

judgment. The board in question no longer exists. It is, therefore, only just to give full credit to the loyalty and conscientiousness of the bodies, in setting forth the factors which have facilitated the Council's task of maintaining the educational and examinational standard of the profession.

The third factor I propose to mention to-day is the publicity of the Council's minutes and reports. About twenty years ago, in a notorious case, an attempt was made to restrain the Council from publishing its proceedings in relation to a penal enquiry. The attempt failed utterly. The "privilege" of the report in question was amply sustained. The Lords Justices of Appeal said:—

"The report is a report of proceedings which actually took place; proceedings within the jurisdiction of the Council; a report of proceedings where the facts had been ascertained; a bona fide true report without any sinister motive; a report of a matter of a public nature; a report of proceedings in which the public are interested, and in respect of which they are entitled to information. . . . . We have come to the conclusion that the publication of these proceedings, being true, accurate, and bona fide, is privileged."

Now, if it is for the public advantage that proceedings relating to the character of a particular person should be published, it may well be held that it is still more for the public advantage that reports and proceedings relating to the action of a responsible corporation in the exercise of its public functions should have the like publication. Thus, when one of the examinations has been inspected, the Inspector's report, with the remarks of the body concerned, and the remarks of the Examination Committee on both, are presented to the Council, and when duly received, are printed in its public minutes. The report is full and detailed, the strong points and the weak points of the examination are described and commented on, ample materials are furnished whereon to base the judgment of

the Inspector, the Committee, and the Council as to its sufficiency or insufficiency. The whole is discussed in the presence of the public and of the reporters of the various journals, and the decision can thus be criticized with knowledge of its grounds. The net result is certainly beneficial. If a body is commended for some new and valuable feature in its methods, for an examination-experiment which has proved successful, the commendation is public, and the credit of the body is enhanced. The other bodies have the opportunity of learning from the success of the pioneer body, and of adopting the improvements themselves. In this way a virtue is not only praised, it is propagated. It is twice blessed; it blesses the bodies that (thanks to their free initiative) were wise enough to discover or invent it; it blesses also the bodies that offer it the sincere flattery of imitation.

On the other hand, if a clear defect or insufficiency is revealed, the body concerned hears of it, the profession hears of it, the public hears of it. The criticism it calls forth is echoed and re-echoed; and the criticism is not always over-tender or under-pungent. It may in fact be so irksome to self-complacency, so disturbing to conventional dignity, that even a dignified and self-complacent body of men, who are convinced that they are "not as other men," and are persuaded that they "need no repentance," will generally find it expedient to take serious account of it. The forces called into play thus tend to eliminate the defect, or even to convert it into a redundancy of merit, before the next inspection. Please remember that I am not trying to hint at particular examples. I am only, as before, showing how the machinery may be expected to work, and illustrating my thesis that by its intrinsic construction it works for the advancement of professional education and the upward development of the minimum standard.

A few outstanding examples will suffice to make clearer the results which all these factors in co-operation have gradually brought about. The successive judgments of

the Council in disciplinary cases made it necessary that, for the information and guidance of the profession, it should formulate its view of certain courses of conduct in the so-called "warning notices." These, as we saw, were not laws enacted, but only law interpreted and declared. In regard to education, the Council had no authority to lay down a compulsory curriculum applicable to all. Strictly speaking it could only consider on its merits each curriculum proposed by any one of the bodies, and pronounce it "sufficient" or "insufficient." If "insufficient" the body must in theory try again and again, until the Council was ready to say "sufficient." The inconveniences of this method are apparent, and out of them arose a virtual appeal to the Council to say, in general terms and beforehand, what *would* be sufficient. In this way the Council was impelled to formulate a statement of what subjects should be included in a sufficient course of study, and how many years at least should be spent in pursuing it. Thus, without formal enactment, yet with general consent and assent, first the four years' and later the five years' curriculum came into being. It is not prescribed by a ukase; in form it professes to be nothing more than a "requirement" for sufficiency, or a "recommendation" to the licensing authorities, but for practical purposes it has the same effect as if it were an authoritative regulation. All the bodies observe it, yet not as of law but as of grace.

Again, there is absolutely nothing in the Medical Acts about the general or non-professional education of medical students; nothing about matriculation or preliminary examinations; nothing about a volume that nearly touches many of you—I mean the *Students' Register*. I hope I shall not undermine your respect for that important document by making this admission. The Royal Commissioners of 1882 thought that the preliminary education and registration of students should be made a matter of statute. They say: "We agree in the opinion universally held by the witnesses that every intending medical student ought to pass an examination in general education before enter-

ing on medical study. . . . As the purpose of this examination is only to test the possession by the candidate of a reasonable amount of general culture, its subjects should not be of a technical or professional nature. . . . . The general scope of the examination should be subject to the approval of the Medical Council, but the conduct of the examination should be left to the Universities or such other bodies as may be approved by the Medical Council. . . . . We consider that the full period of medical study should be passed after the date of registration. The registration of medical students ought, we think, to be placed under the charge of the Divisional Boards [of the three Kingdoms], and an officer of each Board should keep a list of the names. . . . ."

But somehow the necessary provisions for giving statutory effect to these recommendations were not formally embodied in the new Medical Act which followed the Commission. The recommendations practically described a system that had already grown up. As you have heard, the plan was universally approved by the witnesses examined, and they were many and representative of all shades of medical opinion. How had it grown up, and by what authority then—and now? We searched the Acts before for the potential germs of the Council's judicial development, and we found them in three words—"inquiry," "judged," and "guilty." The germs of the quasi-legislation of the Council on students' registration and preliminary education and professional curriculum lie in the words "courses of study" and "ages." As to the sufficiency of these, the Council is to form, and if necessary to report to the Privy Council, its opinion. Let us suppose that the Council's opinion is that no course of study should be less than five years long, and that no one should be licensed till he is twenty-one years of age. That means, first, that the beginning of the course should somehow be marked in a definite way, and, secondly, that it should not be begun before the age of sixteen. To ensure that these conditions are fulfilled in the case of

every student who after the age of twenty-one applies for the registration of his diploma, the Council must either ask each of the twenty-four bodies to keep its own register of students' names and ages, and keep it open to the Council's inspection day by day; or, what is vastly more convenient for everybody, it must institute a Central Register of its own. As students often pass from one University or school to another, the former plan would require the establishment of a students' clearing-house for the ratification and exchange of local certificates of registration. The latter plan saved all this, and so it was adopted. Then arises the question, On what conditions shall a student be entered in the Central Register? What must he do before he is invested by the Council with the rights and privileges—if any—of a registered medical student? At a very early stage most, if not all, of the bodies had insisted that every one of their own students should first show, in some way satisfactory to themselves, that he had enough general education to justify his admission to a liberal profession, and to profit by the scientific and technical training that prepared him for it. The Central Register had no chance of acceptance by bodies like these unless it was based on the same principle. Thus the Council was impelled to require a "sufficient" certificate of preliminary education as a pre-requisite to registration. Again the question of "sufficiency" led to the defining of a minimum requirement, and to the enumeration of the authorities whose certificates as a matter of fact fulfilled the requirement. Without its seeking, the Council had thus to embark on inquiries concerning general as well as professional education, and indirectly to exert an influence on the former as well as on the latter. To this day the time of two Standing Committees, on Education and on Students' Registration, is largely taken up with this subject; and the Council's requirements in regard to "arts" have risen, are rising, and are bound to rise still higher.

Time fails me to tell you in detail by what curious stages, through what disputes and controversies, along what educational bye-paths, the present arrangement has been reached. It is still transitional, there are still difficulties in the way, it is not yet perfect. But on the whole it is making for progress, for the uplifting of the educational status, and thereby of the social status of the profession. And its improvement is fortunately the concern not of the Council only, but of medical men themselves. It is entirely to their credit that so many of them should be eager for a more rapid advance than the Council finds to be practicable. The Council has to carry a large number of bodies with it; the pace of the march has to take account of the slower as well as of the faster of these; and, as you know, it has no real power to drive—it can only lead.

Let me make a last confession in closing. The Medical Council as an instrument of professional government is not ideally perfect. Perhaps no human organization, with the possible exception of the University of Manchester, is perfect. But it may be said for it that it did not start *de novo*, full-armed and potent like Minerva from the brow of Jove. Like every British institution it was built on old foundations of tradition and vested right and sacred privilege. It was not a creation but an adaptation. That it had within it, however, the seed of life, the germ of growth and expansion, my informal sketch of some phases in its half-century of history has, I hope, convinced you. Whether its future be one of continued evolution, or of sudden and complete revolution, it has not wholly failed in the task committed to it. The work it has succeeded in accomplishing has not been measured by the scanty powers it originally received.

346632 MHy M

MacAlister, Donald
Introductory address on the General Medical Council.

DATE. NAME OF BORROWER.

University of Toronto Library

DO NOT REMOVE THE CARD FROM THIS POCKET

Acme Library Card Pocket
LOWE-MARTIN CO. LIMITED