

*Medical freedom -*

# MEDICAL FREEDOM.

ARGUMENTS OF

J. H. BENTON, JR., ESQ.,

PROF. C. W. EMERSON,

DR. J. R. BUCHANAN,

AGAINST

## Medical Legislation in Massachusetts,

TOGETHER WITH

Gov. LONG'S VETO MESSAGE, and Extract from  
HERBERT SPENCER'S "Social Statics."



PUBLISHED BY  
THE MASSACHUSETTS MEDICAL LIBERTY LEAGUE,  
BOSTON, MASS.



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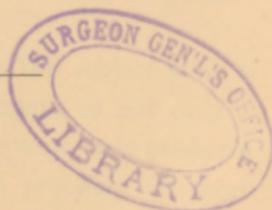
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# PREFACE.

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## TO THE READER :

In presenting this pamphlet for your thoughtful consideration, we desire to call your attention to the nature of the arguments herewith presented.

The legal view of the question is most ably argued by that distinguished member of the Boston bar, J. H. Benton, Jr., Esq.

Dr. Chas. Wesley Emerson, the well-known President of the Monroe College of Oratory, (who, although a regular medical graduate, has never practised medicine, having given his entire life to literary and educational pursuits,) argues the question from the standpoint of an intelligent, unbiased citizen of the Commonwealth, who believes in jealously guarding the liberties of the people against that greatest danger that can threaten the republican form of government, *class legislation*.

Prof. Joseph Rodes Buchanan reviews the subject from a medical point of view. Professor Buchanan is not only a profound thinker and author, (among the many able products of his pen his "Higher Education" is probably the best known,) but also for a number of years Dean of the Cincinnati Eclectic Medical Institute, (parent college of American eclecticism,) and professor of Physiological Institutes of Medicine in the same college. He also occupied the same

chair in the New York Eclectic Medical College, still later filling one of the chairs in the Homœopathic Medical School of the Boston University. Hence his arguments are entitled to great weight, coming as they do from one of the most learned teachers and physicians in the land.

That great philosopher of this century, Herbert Spencer, gives in the extracts we make from his "Social Statics," cogent reasons that will appeal to the better judgment of every student of the social problem; while the terse but pointed reasons set forth in the veto message of our justly popular and universally loved son of the old Bay State, Gov. Long, shows this question as viewed by the able statesman. In short, we here give this subject—the crowning crime against the liberties of the people—as viewed from the legal and medical standpoints, as well as those of the cultured civilian, the philosopher, and the statesman.

ARGUMENT  
OF  
J. H. BENTON, JR., ESQ.,

BEFORE

THE COMMITTEE ON PUBLIC HEALTH OF THE MASSACHU-  
SETTS LEGISLATURE, AGAINST THE PETITION OF THE  
MASSACHUSETTS MEDICAL SOCIETY FOR THE  
PASSAGE OF AN ACT TO REGULATE  
THE PRACTICE OF MEDICINE.

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STATE HOUSE, BOSTON, MARCH 6, 1885.

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THIS is the petition of the Massachusetts Medical Society for "An Act to regulate the Practice of Medicine" in Massachusetts. It raises an important question. It raises a question which touches the personal happiness and security of every man, woman, and child in this Commonwealth, and time which is spent in considering it fully is not wasted.

I desire to invite your attention to the history of the legislation upon this subject in this Commonwealth, but first I want to say a few words about the petition and the proposed bill. It appears that last June the Massachusetts Medical Society appointed a committee of seventeen, — I take it, one from each of the seventeen districts in the State, — to prepare a bill upon this subject and to procure its enactment by this legislature. In pursuance of that a bill was prepared, and a circular, which I will now read, was sent over the State: —

"DEAR DOCTOR: — Herewith find a copy of a bill, prepared after very careful consideration by a committee appointed by the Massachusetts Medical Society, at their annual meeting last June.

"It will be observed that it is based upon no society or class distinction, but upon the evidence of possession of a fundamental knowledge of the science of medicine."

Well, if the members of the Massachusetts Medical Society are willing to stand upon the claim that the examination provided for in this bill goes to a fundamental knowledge of the science of medicine, when they have left therapeutics and *materia medica* out of it absolutely, they take a much more narrow view in the law than they do in their own standard for examination for admission to their own body.

"It has been framed with the thought only of the protection of the people from fraud and ignorance, and has had the almost unanimous approval of the best men consulted in the profession, regardless of modes of practice.

"Twenty-six States have already taken action upon this important subject, and a number of others are now pressing action in their respective legislatures. It is believed that the present presents certain marked advantages for the securing of legislation."

Just what those marked advantages are I don't know; perhaps some people can surmise.

"This circular is addressed, as far as possible, to every member of the medical and dental profession within the State, and your committee earnestly hope you will *at once* return to the secretary your approval of its passage."

There is a direct call to each member of the medical and dental profession in Massachusetts to return at once his approval of this bill.

"And *write* briefly to your *representative* your reasons therefor. You can be of great service in doing this, but *only by immediate* action.

Very respectfully,

HENRY O. MARCY, *Sec'y of Committee.*

116 Boylston Street, Boston, Feb. 13, 1885."

That bill, for some unknown reason, has not been openly presented to this committee, and yet every member has had a copy of it in his pocket. Everybody understands that it is the bill which the committee of the Massachusetts Medical Society wants; and I cannot understand why, unless they are ashamed of it, they have been unwilling to present it for fair and impartial discussion. There are, I believe, about 2,000 physicians in the three medical societies in Massachusetts,—about 1,600 in the Massachusetts Medical Society, about 300 in the Homœopathic Society, as I understand, and about 100 in the Eclectic. I don't know how many dental

surgeons there are, but a good many. This bill, with a request for its approval, has been sent to every one of these gentlemen, and out of the whole number 168 only have returned any kind of an approval of its extraordinary provisions. (Applause.) Fifteen oppose it, and of the 161 who endorse it, — many of them by simply writing on the back of the circular, "I approve," which is not a very marked endorsement, — of the 161 who endorse it at all, 117 are members of the Massachusetts Medical Society. And of the twenty medical gentlemen who have appeared in favor of this bill, all but three are members of the Massachusetts Medical Society, and of that three, one, I believe, was a horse doctor. (Laughter.) He said to the members of the committee that he really did n't know what he did want. He had written a book of 400 pages, but he did n't think that ought to be enacted, although something ought to be done. Among these letters there is one from a member of the Massachusetts Medical Society who sits upon this committee; and the chairman of this committee, who has presided with such uniform fairness and clearness, is a member of that society.

I am not here to say anything against that *ancient and able organization*. It was created at a time when there was but one school of medicine, and it was given extraordinary powers, and it exercised them from 1788 to 1860 as wisely and as well as any exclusive body of men from one particular school of a profession probably could exercise such powers. But I invite your consideration for a few moments to the history of the legislation in this State on this subject: because it is wise, when you are asked to enact a new law, to see whether there has been any law on that subject before, and how it has worked, and what the people have done with it.

The Massachusetts Medical Society was incorporated in 1781. (Laws of Mass., vol. III., pp. 140, 145.) It was given corporate powers; authorized to sue and to be sued; to elect to membership; to suspend, expel, or disfranchise members; to make laws for the government of the society; and was also authorized to issue letters testimonial, under the seal of the society, to such as were found skilled, to the approbation

of the examiners, as medical practitioners. A penalty of one hundred pounds (\$500) was fixed upon the society and its officers if they should obstinately refuse to examine anybody who presented himself for examination. I believe, sir, that they are now bound to examine anybody, whether a graduate of a college or not, and always have been. It had not occurred to the legislature of Massachusetts at that time that a man was not entitled to practise a profession in which he was skilled unless he had a diploma. It recognized the fact that a quack may exist under the protection of a diploma as well as without it.

The society was organized in June, 1782.

In 1788 it was required to prescribe such a course of medical and surgical instruction, and such qualifications, as they should judge requisite for candidates for the practice of physic or surgery, and to cause the same to be published annually in one or more newspapers in each of four medical districts provided for in the State. (Laws of Mass., vol. III., pp. 140-145.) Here you see a standard for qualification was fixed, and it was a public standard. The Massachusetts Medical Society was the authority to fix the standard, and they were required to make the standard known to the people, and every person licensed was required to pay such fees as should be established by the society for examination and license.

In 1802 the examiners or censors of the society were required to examine all who should offer themselves to be approved as practising physicians or surgeons, who had received such an education as was, or might be, from time to time, prescribed by the regulations of the society. An applicant need not necessarily be a graduate of any college, but anybody who came up to the published standard was entitled to examination and to be licensed, if found qualified. And they were required to give every candidate whom they should approve a license to practise physic or surgery, or both. (Laws of Mass., vol. III., pp. 140-145.)

In 1803 it was provided that the members of the Massachusetts Medical Society should not be enrolled in the militia. (Laws of Mass., vol. III., pp. 140-145.)

Then came, in 1817, Mr. Chairman, "An Act to regulate the Practice of Physic and Surgery." This was the first spe-

cific act to regulate the practice of physic and surgery in Massachusetts. It provided that the Massachusetts Medical Society should appoint examiners in each county, who should examine all applicants who had pursued the course of study required by the society, and give licenses to such as were found qualified according to that standard, and also provided that every person licensed by the society to practise should file a copy of his license with the town clerk of the town where he practised. (Laws of 1817, chap. 131.)

It was also further provided by an act in 1818, that any person who had been admitted to the practice of physic or surgery out of the Commonwealth, and had come into it to pursue the practice of the same, might present himself to either of the boards of examiners in the various districts as a candidate for examination, and if they were satisfied that the candidate had received an education agreeably to the regulations provided by the society,—that is, the course of study which was published by the society and had been duly examined and approved by some competent authority,—they might license him to practise physic or surgery or both, without subjecting him to a new examination. (Laws of 1818, chap. 113.)

Then, in 1819, came a most remarkable act. It was entitled "An Act in Addition to an Act Regulating the Practice of Physic and Surgery." It provided that "No person entering into the practice of physic and surgery after the first day of July, 1819, shall be entitled to the benefit of law for the recovery of any debt or fee for his professional services, unless he shall, previously to rendering those services, have been licensed by the officers of the Massachusetts Medical Society, or shall be graduated a Doctor of Medicine in Harvard University." (Laws of 1819, chap. 113.)

The provision prohibiting anybody but a member of the Massachusetts Medical Society or a graduate of Harvard University from maintaining an action to recover compensation for medical or surgical services, was repealed in the revision of the statutes in 1836. The other provisions which I have referred to were incorporated in the provisions of the statutes in 1836, and are found in chapter 22 of the Revised Statutes, entitled "Regulations Concerning the Practice of

Physic and Surgery." This chapter also contains certain other provisions which had been enacted from time to time concerning anatomical science, providing with regard to the use of human dead bodies for dissection and other scientific purposes; and this chapter stood unrepealed and substantially unchanged until 1859, when it was reported by the commissioners for the revision of the statutes as chapter 27 of the Commissioners' Report. This report was submitted by the legislature, at its May session, to a joint special committee of 11 on the part of the Senate, and 28 on the part of the House, together with the President of the Senate and the Speaker of the House. This committee was divided into eight sub-committees, to whom different parts of the Commissioners' Report were referred for examination. Chapter 22 of the Revised Statutes—that is to say, chapter 27 of the Commissioners' Report—was referred to a committee composed of six members. The Hon. Increase Sumner of Great Barrington was chairman, and Chas. Hale of Boston, subsequently Speaker, was also a member.

On the 16th of May, the general committee instructed this special committee, by special order, to inquire into the expediency of omitting all that part of the chapter relating to the Massachusetts Medical Society, and to the regulation of the practice of medicine; and on the 21st of May they reported to the general committee amendments, striking out every section, and every line, and every word in that chapter which gave to the Massachusetts Medical Society any power to examine or license physicians or surgeons, or to prescribe a course of study and qualifications for physicians and surgeons. The general committee adopted these proposed amendments, with the addition of a change of title of the act, from "Regulations Concerning the Practice of Physic and Surgery," to "Of the Promotion of Anatomical Science." And that chapter now stands, with the same title, "Of the promotion of Anatomical Science," as chapter 81 of the Public Statutes.

All these amendments were adopted by the legislature, and chapter 22 of the Revised Statutes, being chapter 27 of the Commissioners' Report, was enacted as chapter 27 of the General Statutes, Dec. 28, 1859. A comparison of these

chapters and the amendments will show that the legislature then deliberately took out of the law of the Commonwealth every provision for the regulation of the practice of medicine or surgery, or for the examination and qualification of physicians or surgeons. This was not done hastily, Mr. Chairman, for the Commissioners' Report was made on the 15th of December, 1858, and submitted to the legislature in January, 1859. The committee to whom it was referred commenced its work on May 3, 1859, and continued their sessions until Sept. 6, 1859, during a recess of the legislature, and reported to an extra session of the legislature on the 7th of September, 1859, and the General Statutes were enacted on the 28th of December in that year. The matter was thus, as you see, under consideration more than a year.

Nor did this action of the legislature pass unchallenged and undisputed by the Massachusetts Medical Society. The report of the councillors of that society for 1859 shows, that on May 25 they appointed a committee, and instructed them to "look after the interests of the society in the legislature, and authorized them to take such measures to protect those interests as they might deem expedient." And yet, in spite of this watchful care of the Massachusetts Medical Society over their rights and privileges, the legislature, without dissent, took every provision for the regulation of the practice of physic and surgery out of the statute law of the Commonwealth, and we have lived without it ever since. (Applause.)

#### WHO OPPOSED RESTRICTIVE LEGISLATION.

Now, gentlemen, it is sometimes wise to see what kind of men disapproved legislation. And if you will look to the record, you will find that among the members of the committee who reported this amendment, by which the State went out of the business of supervising the practice of medicine, were the Hon. Increase Sumner of Great Barrington, the Hon. George M. Brooks of Concord, afterwards an able member of Congress, and now and for many years the Judge of Probate in Middlesex County, the Hon. Benjamin F. Butler of Lowell, the Hon. Mellen Chamberlain of Chelsea, now the Librarian of the Public Library of Boston, and for

many years Chief Justice of the Municipal Court of Boston, the Hon. Caleb Cushing of Newburyport, the Hon. Charles Hale of Boston, the Hon. Amasa Norcross of Fitchburg, the Hon. Tappan Wentworth of Lowell, the Hon. George M. Stearns of Chicopee, and the Hon. Thomas H. Russell of Boston, now the chairman of the Board of Railroad Commissioners. These men were all able and experienced legislators. They did not act hastily or secretly. They acted deliberately and in the open light of public discussion. The whole thing was under consideration and discussion for months. The parties who were most interested in preserving these statutory provisions took action upon the subject; and the legislature, as I said before, deliberately took these laws from the statute books. Do you ask why?

The answer seems to me obvious. The legislature found that the great power to regulate the practice of medicine, though in the hands of the wise and able and trained members of the Massachusetts Medical Society, could not be and had not been exercised, even by them, to the satisfaction of the people of the Commonwealth. They found that it was impossible to regulate the practice of an art in which there is no standard, in which the most distinguished members of the profession admit that there is no standard, and differ and quarrel among themselves all the time as to what is best and right. And for this reason the legislature of Massachusetts wisely said: Let this thing stand upon its own merits; the people of Massachusetts are educated and intelligent enough to know what they want (applause); we will abandon the system of paternal government, which provides doctors and nurses and pap for the people under the guise of protection. And they did abandon it (applause); and we have lived twenty-five years in this Commonwealth, gentlemen, without any statute law whatever upon this subject, and I represent people who believe that we can live without any a little longer. (Applause.)

We have not lived during this twenty-five years without such a law because nobody has asked for it; for there have been, during this time, repeated attempts by the medical fraternity—most of them, I believe, coming from the same

source from which this petition comes—to have the practice of physic and surgery regulated. One was made in 1877. I hold the bill then asked for in my hand, and I shall be happy to furnish it to the committee if you desire to examine it; it may aid you somewhat. Its provisions are of the same general character as the bill now asked for. I have no doubt it was drawn with great care; I have no doubt the gentlemen who presented it believed it ought to be enacted. They had a very full hearing upon it before the Judiciary Committee. That Judiciary Committee was composed of the Hon. Charles Theodore Russell of Cambridge, Mr. Bowman of Middlesex, since member of Congress, Judge White of Plymouth, Mr. Kellogg of Berkshire, and Mr. Coffin of Middlesex,—probably as able a Judiciary Committee as the Senate of Massachusetts has known for fifty years. That committee reported unanimously on the twenty-third day of March, 1877, that the bill ought not to pass. (Applause).

The next year they were up here again, and were sent to the Committee on Water Supply and Drainage (laughter); just why, I don't know, and I have not been able to find anything in the record that would tell. But there it was; and the proposition then took two forms. One was a general bill to regulate the practice of medicine and surgery in the State of Massachusetts; the other was a bill to regulate the practice of medicine and pharmacy in the city of Boston. And those bills contained the provision,—which many medical gentlemen think ought to be in the one asked for this year,—that there should be a fixed representation upon the board of examiners from each of the three medical societies in the Commonwealth. The fate of those bills was this: The bill to regulate the practice of medicine and pharmacy in the city of Boston was reported by a minority of the committee, consisting of Mr. Reed, Mr. Cornish, and Mr. Martin. That bill went into the House, and I believe they did n't get votes enough to call the yeas and nays on it. The bill to regulate the practice of medicine and surgery in the State of Massachusetts was reported by the entire committee as inexpedient, so that did n't get any votes. (Applause).

## UNDER A NEW DISGUISE.

In 1880 they came again, that time under a new bonnet,—it is sometimes a new bonnet, but it is always the old face. Then it was under the bonnet of the Social Science Association,—and then the applicants employed able and learned counsel. The gentleman who now presides with such ability in the branch of the legislature in which you, Mr. Chairman, sit, was counsel for the petitioners; and he cut the bill down so small that he thought it would go. I will submit that bill to you, if you would like it; I won't stop to read it. The essence of this bill was that nobody should be allowed to practise medicine or use the title of doctor, or doctor of medicine, in Massachusetts, unless he had received the degree of doctor of medicine from some reputable medical institution empowered by special charter to grant it. That year the Committee on Public Health, to which the matter was referred, adjourned to the Representatives' Hall and sat for days, and heard everybody, and this subject was probably discussed in its various aspects with more learning and more ability than is likely to be brought to the discussion of it again for a great many years. Well, they got a bill that time. A short bill was reported by the committee (Senate Document, No. 198, 1880). But it was rejected by a very large majority in the House.

There has also been some legislation upon the subject of medical degrees, to which I desire to call your attention. In 1874 the legislature provided by a general law that corporations might be created for medical purposes by voluntary associations. (Laws 1874, chap. 375, sect. 2, now Public Statutes, chap. 115, sect. 2.) Under that act one or more medical schools or colleges were incorporated in Massachusetts. And these colleges assumed, as they had a right to do, to confer degrees. The Massachusetts Medical Society, and its advisers, came to the legislature in 1883, and said: "We want that provision of the law which authorizes corporations to be formed for medical instruction repealed." They got the matter referred to the Committee on Education, and the Committee on Education reported a bill, striking the word "medical" out of section 2 of chapter 115 of the Public Statutes. (House Document, No.

159, 1883.) This would have prevented any corporation being formed under the general laws for the purpose of medical education ; not a very good way to promote medical knowledge and education, I submit. That bill went into the legislature, and there it was rejected, and an act was substituted providing that no corporation organized for medical purposes under the provisions of chapter 115 of the Public Statutes should confer degrees, or issue diplomas or certificates, conferring, or purporting to confer, degrees, unless specially authorized by the legislature so to do, with a penalty of \$500 in case of violation of the act. (Laws, 1883, chap. 268). That is now the law, and to-day, with the exception of the Harvard Medical School of Harvard University, and the Berkshire School, which I think is under Williams College, and two or three others, and the College of Physicians and Surgeons, in Boston, which has a special authority to confer degrees, but which I believe the Massachusetts Medical Society refuses to recognize, there are no medical schools or colleges in Massachusetts that can confer degrees. So you see the limited number of students in Massachusetts medical schools who could obtain degrees that would entitle them to examination under the proposed legislation.

#### GOV. LONG'S VETO.

In 1882 the Massachusetts Dental Society, a sort of an auxiliary of the Massachusetts Medical Society, obtained the passage of a bill "to regulate the practice of dentistry," for the purpose, as they claimed, of keeping the profession clear of impostors ; but that wise and sagacious magistrate, John D. Long, who was the governor of the Commonwealth, promptly returned it to the Senate with a veto message, in which he said : " If such legislation is required for dentists, it is not easy to see why there should not be similar special legislation concerning cooks, plumbers, apothecaries, and the other businesses which involve life and health ;" and, also, that " it would, perhaps, be better worth while to consider the expediency of a general statute to the effect that any person pursuing a business or profession, without sufficient skill therein, shall be punished. Such a statute, in the

hands of judge and jury, would never work injustice, and yet would be ample for those exceptional cases of imposition, on the strength of which various special statutes are urged from year to year." I respectfully commend this last suggestion to the careful consideration of this committee.

After this message had been read in the Senate, the question was put "Shall the bill pass, the objections of the Governor to the contrary notwithstanding?" One Senator only voted for the bill, and thirty voted against it.

#### STILL ANOTHER ATTEMPT.

There has been one other attempt to obtain legislation upon this subject, or upon subjects analogous to this, up to the present time; and that was last year, when a bill was introduced to regulate the sale of patent medicines and proprietary articles. That was sent to the Committee on Public Health, which reported it ought not to pass.

Now, you will find by the record, Mr. Chairman, that none of these applications have been made by the people. They have all been made by gentlemen of the medical profession. They say they have made them for the protection of the people. By what divine right they are authorized to act as protectors of the people of Massachusetts they do not show. (Laughter.) They held the control of the matter for more than half a century, and the people took it away from them. For twenty-five years the people have kept it away from them, and I believe they will continue to do so for an hundred years to come. (Applause.) The people have never asked any change, and they do not ask it now. There was, however, until this winter, to my mind, a very sound reason why there should be legislation upon this subject. And it is found in the statement contained in the preamble of the petition of the Social Science Association in 1880, that "by the laws of this State death caused by culpable and reckless ignorance of duty is not considered manslaughter by the courts in regard to physicians, although it is held to be manslaughter in the case of those following other callings; so that ignorant and self-styled physicians are not restrained by fear of the law from recklessly trifling with the lives of the citizens of this State." And that was the fact;

such was the law at that time. And yet, in spite of that fact, the legislature refused to regulate the practice. The learned gentleman who represented the petitioners at that time, the present President of the Senate, said,—I quote from his printed argument, —“In this condition of things, we ask you to interfere.” That was his main, almost his only, argument. He said: “The Supreme Court of Massachusetts, in *Commonwealth v. Thompson* (6 Mass. Reports, 134), which was decided in 1809, and which every doctor knows about, and most people have heard of, held that a man who practised medicine, — who attempted to cure, — if he acted honestly, although he was grossly negligent, although he was presumptuous, could not be convicted of manslaughter, or of assault, or any crime, and, therefore, he said there ought to be legislation to regulate it; that if physicians were protected under the law from the consequences of the same things which, if done by others, would send them to State prison, then the practice of physic should be regulated. And I thought so too. But such is not the law of Massachusetts to-day. That old decision of the court was not conceived by the profession to be sound; and, in Worcester County, a man by the name of Pierce was indicted at the May term of the Superior Criminal Court, in 1884, for manslaughter, in causing the death of Mrs. Mary A. Bemis, in the application of kerosene oil, with her consent, by covering the deceased with flannel saturated with oil, for two or three days, in consequence of which she died. On the trial before His Honor Judge Pitman, the counsel for Pierce contended that under the decision of *Commonwealth v. Thompson*, to which I have referred, the killing, to constitute manslaughter, must have been the consequence of some unlawful act, and what he had done was not unlawful, because it was done as a physician in the attempt to heal the woman. They asked the court to rule that, “There is no law which prohibits any man from prescribing for a sick man, with his consent, if he honestly intends to cure by his prescription. A patient has a right to employ whom he pleases to treat him, and acceptance of the employment by one who honestly believes he is able, and honestly intends to cure, is not a felonious act, however ignorant of medicine he may be in fact.” But the court,

against the defendant's objection, ruled as follows: "It is not necessary to show an evil intent; if, by gross and reckless negligence, the defendant caused the death, he is guilty of culpable homicide." Upon this ruling, Pierce was found guilty by the jury and convicted. The case went to the Supreme Court on exceptions to this ruling, and I have here the opinion of the court, in which they sustain the ruling of Judge Pitman; and Pierce is now serving a sentence of six years in the State prison for manslaughter.

#### THE LAW AS IT STANDS.

Thus you see that the law in Massachusetts is now that every man or woman has a right to practise the healing art, but practises it at his or her peril. If he is ignorant or negligent, he is liable in damages civilly. The rule which covers the liability of a physician is not different from that which covers the liability of a farrier who shoes a horse, or a man who assumes to do anything in a particular calling. A man who assumes to do a particular thing for you, Mr. Chairman, because that is his profession, impliedly says to you, "I have sufficient skill and ability to do it." A man who assumes to minister to you in sickness, impliedly says to you, "I know enough of the art to minister to you wisely and skilfully and well; I am a physician; I am learned enough to treat the disease which I assume to treat." Not necessarily to treat every disease, but the disease he assumes to treat. The man who holds himself out as being competent to treat a fever does not necessarily say, "I am competent to amputate a leg, or to perform the operation of ovariotomy." The law is very plain and simple. The man who says, "I can treat you for a fever, or for the ague," impliedly contracts for skill and learning sufficient to do that and nothing else, and the law ought not to require anything else of him. Under the proposed bill, however, he must not only have knowledge to treat a fever, but he must be a surgeon and a dentist, and the man who assumes to fill teeth must be a physician and a surgeon. The examination for admission to practice is made the same for dentists, surgeons, and physicians. The present law is clear and ample. A man or woman who assumes to practise the healing art, impliedly

contracts that he or she has sufficient skill and knowledge to do the thing which they assume to do, to cure the disease which they assume to treat, and no other. And if he or she does not have it, they are liable in damages for all the consequences that result from the lack of knowledge and skill. If he or she is grossly or presumptuously ignorant and negligent, and a person is thereby killed or injured, he or she is liable for manslaughter or for an assault. The same principle that made Pierce liable for manslaughter because Mrs. Bemis died, would have made him liable for an assault, if she had lived and been a cripple. *Every man, woman, or child in Massachusetts who assumes to practise medicine, who assumes to heal others, does so at his or her peril absolutely. Now, I submit, that is all the law we need.* (Applause.) We have got on under that law -- under a law much less stringent than that until this year -- well enough for twenty-five years. Now you are asked by the Massachusetts Medical Society to change it.

#### NOBODY ASKS FOR IT BUT THE DOCTORS.

We have had nineteen doctors here in favor of it, and one was a horse doctor. They are all excellent men, all gentlemen worthy of respect, and they ought to be heard, and have been heard fully. They had a right to come here to get such legislation as they think the Commonwealth needs, or their own interests require. Only a part of them, however, were frank enough to say that what they were after was protection. The medical gentleman who came up from Plymouth County said, "We think we ought to be protected against these quacks. Why! there are six of them down in my county," he says, "all having a large practice." (Laughter.) And said he, "some of them cannot read nor write." Well, what if they can't, if they cure diseases? -- if they do what they assume to do? If a man comes to cure me of a disease, -- of a fever or the ague, -- and he cures me, I don't care whether he can read the New Testament in Greek, as the Rev. Dr. Warren says every man who claims to be liberally educated ought to be able to do, or whether he can write his name. If he does not cure me, if he is negligent, if he has not the skill which he assumes to have, why then he is liable

to me in damages. If he is grossly and wilfully and presumptuously ignorant and negligent and he injures me, he is liable criminally. I need no other protection. The people need no other protection. My friend Mr. Gargan said to Dr. Abbott, as you remember, "How is it about the people being unanimous for this, when there is such a large practice for all these quacks?" "Oh!" he said, "I did n't say the people were unanimous for it; I said the doctors were." (Laughter.)

#### THE THREE CLERGYMEN.

We have had three clergymen here, presumably at the request of the doctors. The first was the Rev. Dr. Warren, who is the president of Boston University, and who has, of course, every year a fair crop of new-fledged doctors of medicine to provide places for; and he would be very glad that nobody should be allowed to practise the healing art except those who had diplomas. He would be very glad, I have no doubt, to have as narrow a circle from which to draw doctors as possible, and then his graduates would stand a better chance. But I do not think the Doctor was actuated by that motive, or knew that he was. Sometimes, however, men are actuated by motives of which they are not really conscious. I think the Doctor felt there ought to be some legislation. But about all he said was, he wanted to have some sign by which people could tell whether a man was a doctor or not. Well, I don't object, and I don't know that anybody objects, to a law, if it is necessary and discreet, compelling every doctor to put on his sign the name of the college from which he graduated; and if he did not graduate from any college to put that fact on his sign too. (Laughter.) My knowledge of physicians has been somewhat extensive, and I do not believe that the fact that a man graduated from the Harvard Medical School, engraved upon his door-plate, would drive away a great many patients. At any rate, people might choose, and I don't know anybody who would object to that. It is precisely this liberty of choice which ought to be preserved, and which the proposed bill takes away.

Then comes the Right Rev. Dr. Byrnes, and I could not but remember, when he was talking, the historical fact that

the great religious denomination of which he is an honored member, and which I believe does a great deal of good to-day, has always claimed the right to regulate men's morals by law, and once practically claimed the right to regulate the practice of medicine also, and ordained that any woman who practised medicine without its sanction should be deemed to be a witch. I take it the people of Massachusetts will not profit by going to that school for instruction. (Applause.) But even Dr. Byrnes did not tell you he approved the proposed bill.

Then we had the Rev. Dr. Webb, a gentleman widely known, of great learning and of most excellent intentions. But he, too, belongs to the old red sandstone age. (Laughter.) It is within the past twelve months, I think,—certainly within two years,—that he was opposed to settling one of the most able and eloquent ministers of his denomination as pastor in the Old South Church of Boston because he could not swallow quite all the ultra dogmas of the extreme Calvinistic creed. (Laughter.) Knowing this, I was not surprised when Dr. Webb told you that he thought the State ought to guarantee sound education and competency in teachers of morals and practitioners of medicine. And I agree that if it is bound to do the one it is bound to do the other. (Applause.)

Now, Mr. Chairman and gentlemen, you have had no evidence in favor of this petition. No fact has been given to you. No one of these gentlemen, so competent, so trained, so well fitted to instruct you, has given you any facts. They have dosed you with their opinions, which you probably knew before; but they have given you no facts. They have formulated no charges against anybody. I could not but think, sir, yesterday, when Judge Ladd of Cambridge, who is known and respected of all men in the community where he has lived for more than half a century, filling an important judicial office with honesty and fairness and dignity, was giving you, specifically, case after case to show that his view of the healing art was correct,—a view, by the way, in which I cannot personally agree,—how different the clear, the careful, the accurate, specific statements that he made to

you were from the rhetorical efforts of the gentlemen in behalf of the petitioners. (Applause.)

Not a non-professional man has said a word in favor of any legislation. And yet this hearing is so widely known and excites such interest in the public mind that this large room is not sufficient to accommodate those who desire to come. The petitioners say that quackery is so rampant in the Commonwealth, and the evils resulting from the fact that you have no law regulating the practice of medicine are so great, that the people are crying out for the proposed legislation! And yet not a man, woman, or child, outside of the three doctors of divinity and the nineteen doctors of medicine,—seventeen of them, I believe, members of the Massachusetts Medical Society,—has come here to raise a voice in favor of such legislation. I know the legislation is not called for by the people, and I believe that it is unwise and unnecessary.

#### NO MEDICAL STANDARD.

There is no standard by which you can regulate the practice of medicine. That is the root of this matter. There is no standard in the different schools. Do you not find, in every country town, gentlemen of the same school quarrelling over the practice of their profession, oftentimes in as unseemly a way as the medical gentlemen have quarrelled before you? There are mistakes in all the schools. I have no doubt there is good in all the schools. I am free to say that if any legislation was to be had, from my standpoint it would be legislation which made the Massachusetts Medical Society the sole judge, because I belong to that school in medicine as much as I belong to any, and if I were to be doctored to death I should prefer to be doctored to death by a man of the old school rather than of the new. (Laughter.) But I do not believe it is any more just or right to exclude my friend Judge Ladd, who wants to be doctored by a magnetic healer, or by a Christian scientist, or by somebody who does not profess to practise medicine according to any of the recognized schools, from exercising his choice, than it would be to debar me from the right to be doctored to death by my friend Dr. Marcy, if I chose to employ him, as very likely I should. (Laughter.)

## DOCTORS DISAGREE.

Why, they differ in therapeutics, as we all know. They differ in *materia medica*, as we all know. They differ even in pathology and anatomy,—at least, they quarrel over it. Within six months I have had a case in this city, where I had upon the one side three of the ablest pathologists of the so-called regular school as witnesses in behalf of my client, and on the other side were three of the leading surgeons of the homœopathic school in Massachusetts, and upon precisely the same facts, upon precisely the same autopsy, at which they were all present, they came to diametrically opposite results, and disputed over it just as badly as the homœopaths and the allopaths always dispute. You find an illustration of this in all expert testimony. I have seen—everybody who is familiar with the courts has seen—doctors, able men, learned men, honest men, who believed it, and who had opportunity to inform themselves, come into court and testify that the plaintiff would never recover from certain injuries; and yet I have seen that same plaintiff, under the curative power of a verdict, take up his bed and walk, and go about his business in six months afterwards. (Laughter.) I know of a case in my practice where five of the ablest surgeons in Massachusetts, on my side of the case, testified that a man—who was brought into court upon his bed, who said he could not walk, who said he could not stand or use his hands—could get up if he only tried, and would get up as soon as the case was decided, and get well and go about his business, and they all believed it; and if they did not know, as I argued to the jury, there was no one in Massachusetts that did know. And yet that man, who obtained a very large verdict two years ago, is still in substantially the same condition that he was then. Talk about a standard in medicine! I want no better evidence that there is no standard than this hearing has given us by the unseemly contests of the doctors before you.

## SELF-CONDEMNATION.

It may be said to be presumptuous, perhaps, for me to say there is no standard, though I believe myself that Voltaire was right when he said that “the art of medicine con-

sists in amusing the patient, while Nature cures the disease." (Laughter.) But I desire to call your attention to the opinions of a few of the ablest members of the medical profession upon this subject. Dr. Chapman, Professor of the Practice of Physic in the University of Philadelphia, says: "Consulting the records of our science, we cannot help being disgusted with the multitude of hypotheses obtruded upon us at different times. Nowhere is the imagination displayed to a greater extent; and perhaps so ample an exhibition of human invention might gratify our vanity, if it were not more than compensated by the humiliating view of so much absurdity, contradiction, and falsehood. To harmonize the contrarieties of medical doctrines is, indeed, a task as impracticable as to arrange the fleeting vapors around us." Dr. Abercrombie, Fellow of the Royal Society of England, and of the Royal College of Physicians in Edinburgh, says: "Medicine has been called by philosophers the art of conjecturing, the science of guessing." Sir John Forbes, Fellow of the Royal College of Physicians, London, physician of the Queen's household, etc., says: "No systematic or theoretical classification of diseases or therapeutic agents ever yet promulgated is true, or anything like the truth, and none can be adopted as a safe guidance in practice." Dr. James Johnson of London, Surgeon Extraordinary to the King, etc., said: "I declare my conscientious opinion, founded on long observation and reflection, that if there was not a single physician, surgeon, apothecary, man midwife, chemist, druggist, or drug on the face of the earth there would be less sickness and less mortality than now obtains." Coming nearer home, Dr. Jacob Bigelow, a former President of the Massachusetts Medical Society, in his "Expositions of Rational Medicine," says: "I sincerely believe that the unbiased opinion of most medical men of sound judgment and long experience is, that the amount of death and disaster in the world would be less than it now is, if all disease were left to itself." Sir William Hamilton, in his "Discussions on Philosophy," p. 638,—an authority that I know my medical friends will respect,—says: "The history of medicine, on the one hand, is nothing less than a history of variations; and on the other, only a still more marvellous history of how every successive varia-

tion has by medical bodies been furiously denounced, and then bigotedly adopted." If you will turn to Thatcher's History of Medicine in America, pp. 21, 22, you will find that when Dr. Boylston, in 1721, introduced vaccination into Boston, "most of the medical faculty were its active and violent opposers."

Dr. Oliver Wendell Holmes, formerly Professor of Anatomy in the Medical School of Harvard University, in his "Border Lines of Knowledge," p. 70, says: "The disgrace of medicine has been that colossal system of self-deception, in obedience to which mines have been emptied of their cankering minerals, the entrails of animals taxed for their impurities, the poison-bags of reptiles drained of their venom, and all the inconceivable abominations thus obtained thrust down the throats of human beings suffering from some fault of organization, nourishment, or vital stimulation."

Bichat (the great French pathologist), in his "General Anatomy," vol. I, p. 17, says: "Medicine is an incoherent assemblage of incoherent ideas, and is perhaps of all the physiological sciences that which best shows the caprice of the human mind. What did I say? It is not a science for a methodical mind. It is a shapeless assemblage of inaccurate ideas, of observations often puerile, and of formulæ as fantastically conceived as they are tediously arranged."

The late Sir Henry Holland, one of the most eminent physicians in Europe, in his "Recollections of Past Life," p. 88, says: "Actual experience, with a sense of responsibility attached to it, is the sole school in which to make a good physician. One of the most learned men I ever knew in the literature of medicine, as well as in physical science, was one of the worst practitioners, borrowing his diagnosis from books, and not from that happier faculty, *almost an instinct, a spiritual gift, which enables some men to interpret and act upon signs which no book can describe.*"

Dr. L. M. Whiting, in a dissertation delivered at an annual commencement in Pittsfield, Mass., and recorded in the Boston Medical and Surgical Journal, vol. 14, p. 183, says: "The very principles upon which most of what are called the theories involving medical questions have been based were never *established*. They are, and always were, false; and

consequently the superstructures built upon them were the baseless fabric of a vision — transient in their existence — passing away upon the introduction of new doctrines and hypotheses like dew before the morning sun. Speculation has been the garb in which medicine has been arrayed, from the remote period when it was rocked in the cradle of its infancy by the Egyptian priesthood, down to the present day; system after system has arisen, flourished, fallen and been forgotten, in rapid and melancholy succession, until the whole field is strewn with the disjointed materials in a perfect chaos, and amongst the rubbish the philosophic mind may search for ages without being able to glean from it *hardly one solitary well-established fact.*"

It is not strange that Dr. Benjamin Waterhouse, who for twenty years was a professor in the Medical School of Harvard University, at the close of his time said: "I am sick of learned quackery."

#### THE ART OF MEDICINE IN ONE SENTENCE.

The great German physician Boerhaave ordered in his will, I believe, that all his library should be burned, except one book, which he said contained the whole art of medicine. After his death, I believe they did not burn the whole library, but they looked for that one book with great anxiety. Its pages were all found to be blank but one, and upon that was written, "Bowels open, head cold and feet warm, and physicians will get poor." Dr. Holmes stated once, I believe, in an address to the Massachusetts Medical Society, that he thought it would be better for mankind if all the medicines were poured into the sea, although he thought it would be hard on the fishes. (Laughter.) Perhaps this was one of the genial jokes of the autocrat of the breakfast-table. He did say on this subject, however, the following, which is not in the nature of a joke, but what he undoubtedly thought and taught. In his essay, read before the Massachusetts Medical Society, at the annual meeting, May 30, 1860, he said: "A glance at the prevalent modes of treatment of any two successive generations, will show that there is a changeable, as well as a permanent, element in the art of healing; not merely changeable as diseases vary, or as new remedies

are introduced, but changeable by the going out of fashion of special remedies. The truth is that medicine, professedly founded on observation, is as sensitive to outside influences, political, philosophical, imaginative, as is the barometer to the changes of atmospheric density."

You all remember Lord Macaulay's vivid account of the death of Charles II., when "the fourteen doctors who deliberated on the king's case contradicted each other and themselves. Some of them thought his fit was epileptic, and that he should be suffered to have his doze out. The majority pronounced him apoplectic and tortured him like an Indian at the stake. It was then determined to call his complaint a fever, and to administer doses of bark." I suppose that means quinine. "Several of the prescriptions have been preserved. One of them is signed by fourteen doctors. The patient was bled freely. Hot iron was applied to his head. A loathsome volatile salt, extracted from human skulls, was forced into his mouth." (Macaulay's *Hist. England*, vol. 2, pp. 6, 15.) No wonder the poor king apologized for being such an unconscionable time dying! And yet, all these fourteen physicians were men licensed under a system precisely such as the people of Massachusetts destroyed in 1860, and as the Massachusetts Medical Society now asks you to re-establish. (Applause and laughter.) The Act of 14-15 Henry VIII. gave to the College of Physicians, corresponding exactly to the Massachusetts Medical Society, the whole power of examination and license of physicians for England; so that, as the preamble provided, the practice of the healing art should be confined to "those persons that be profound, sad, and discreet, and deeply studied in physic." (Knight's *Hist. England*, vol. 2, p. 497.)

But, it is said, you inspect fish, you inspect oil, you inspect gas, you license lawyers; why should you not inspect physicians and license them? I have a list from the statutes, which I will hand to the committee, embracing every case in which inspection is called for of any article sold in Massachusetts. It includes petroleum, and fish, and hops, and milk, and sperm oils, and intoxicating liquors, and hoops and staves, and lime, and vinegar, etc.; and in

every one of these cases, where the standard is not one that everybody would recognize,— as, for instance, diseased meat, or decayed fruit, where you need no standard to be established by law or by a medical examination, for everybody understands what decayed fruit is and what is diseased meat, — in every case where there is any standard necessary to be defined, the statute fixes it.

The statute which provides for the inspection of fish, fixes definitely the standard for such inspection. (Public Statutes, chapter 56, sections 25, 26, 32, 37.) The statute which regulates the sale of milk provides that milk shall be deemed to be adulterated which contains more than eighty-seven per cent. of watery fluid, or less than thirteen per cent. of milk solids, and thus establishes an absolute standard for the guidance of dealers. (Public Statutes, chapter 57, section 9.) The statute for the inspection of illuminating gas and gas meters gives a unit of measure and an absolute standard of quality. (Public Statutes, chapter 61, sections 8, 14.) The statute regulating the sale of naphtha and illuminating oils fixes the standard of quality by express and specific terms, and even provides that the test shall be made by a particular kind of instrument for that purpose. (Public Statutes, chapter 102, sections 69, 70.) The statute which regulates the sale of intoxicating liquors provides specifically what liquors shall be deemed intoxicating within the law. (Public Statutes, chapter 100, section 27.) The law regulating the inspection and sale of sperm oils provides that the test shall be Harris' oleometer. (Public Statutes, chapter 59, section 5.) The statutes regulating the sale of hops, lime, hoops and staves, vinegar and lumber, all prescribe certain and definite standards of quality in express terms. (Public Statutes, chapter 56, sections 31, 32; chapter 60, sections 49, 70; chapter 63, sections 8 to 16 inclusive.)

And in the building laws, which are talked about, there is a standard fixed by the law, and there are two pages of the Public Statutes filled with the most exact and complete description of the kind of lumber that shall constitute the various qualities recognized to be sold under the law. (Laughter.)

And there is a standard for the qualification of lawyers. Turn to chapter 159 of the Public Statutes, sections 34 to 41 inclusive, and you will find the regulations for admission to the practice of the law. There is a very general impression in the community that a man cannot practise law without being examined, and licensed, and admitted to the bar; but it is not correct. There is nothing to-day to prevent our friend Dr. Marcy from going down on State Street and hiring an office and putting out his sign and styling himself an attorney-at-law, and doing all the law business for anybody that he can get to do. If he is not an attorney-at-law, and he tells a man falsely he is, he is liable precisely as anybody else is liable for false pretences; but there is no statute law specifically prohibiting him from doing such business. A man may open an office, he may draw papers, he may give advice, he may do all kinds of law business, except going into court and trying cases, generally as an officer of the court, as a part of the machine of the courts, without leave or license of anybody. It is his right as much as it is to make boots and shoes or sell goods.

Now, let us see how it is when he goes into court. If a man wants to be an attorney, an officer of the court, admitted to do general business and to try cases generally in court, without nomination by his client in each case, he must be admitted to the bar. He must take an oath fully set forth and prescribed by the statute. But, mark you, there is a standard by which a lawyer can be examined. If the question is asked, What is the law on such a subject? we turn to the statute or to the decided cases and find it. What is the law in regard to the punishment of a physician who is ignorant and presumptuously and wilfully negligent in the treatment of a patient, whereby the patient is either injured or dies? We turn to the opinion of the Supreme Court in *Commonwealth v. Pierce*, and find what the law is. There is a standard for qualification for admission to the bar, and a standard by which to examine candidates,—the statute law of the Commonwealth and the 136 volumes of reported decisions,—and you know when the applicant makes a correct answer to questions. Not so in medicine. Ask what is necessary to constitute an estate of inheritance

in Massachusetts, and there is but one possible answer. Ask what is the proper treatment for a fever, and there are more answers than there are different schools of medicine.

But, leaving that, section 40 of chapter 159, Public Statutes, provides that parties may manage, prosecute, or defend their own suits personally. Well, I believe this bill does leave people the right to take drugs themselves. (Laughter.) Section 41 provides that "any person of good moral character, unless he has been removed from practice as an attorney, under section 39, by the court, may manage, prosecute, or defend a suit, if he is specially authorized by the party for whom he appears, in writing or by personal nomination in open court." That is to say, I can go down to the court, and I can say I want my friend Dr. Wilson to try a case for me, and the court are bound to hear him for me. I need not put anything in writing; I can simply say, "Dr. Wilson is my attorney," and the court are bound to hear him. It is my constitutional and legal right to be heard by him, or by any reputable person, learned or unlearned, with a diploma or without a diploma; and that is all we want to preserve for the people as against the physicians. All we want to preserve is the right of every man or woman of full age and sound mind in Massachusetts to have such persons minister to them in disease or sickness as they wish. (Applause.) And when the medical profession say that doctors should be examined and licensed, because a man who becomes an officer of the court is examined and licensed by the court, I say: Put into any bill that they may bring here a provision that any person may have the same right with regard to his choice of his physician or his surgeon that he has to-day with regard to his lawyer, and I am content. (Applause.) But they don't mean it, and they won't do it.

Dr. MARCY. Yes, we will.

Mr. BENTON. Then, why don't you put it in your bill; year after year such an amendment has been proposed, and it has always been rejected by your society.

#### BACK TO THE DARK AGES.

Now, Mr. Chairman, I am taking a good deal more time than I meant to take. I think this proposed legislation is

going back to the dark ages. It is simply an odious form of the most odious kind of government, a paternal government which regards the subjects of the State as children, to be fed and nursed because they cannot take care of themselves. It was once extended in England to overlooking modes of manufacture and agricultural operations and domestic affairs. It directed farmers at what fairs they should sell their products; it prescribed the quantity of ale to be sold for a penny; it made it penal to sell any pins except those of a certain specified character; and it directed farmers what crops they should raise, and how much. In China this kind of government has regulated the dress; in Austria it has regulated the literature; in Germany it has prevented shoemakers from following their craft until an inspecting jury has certified to their competence, has forbidden a man who had adopted one calling from ever taking up another, and also forbidden any foreign tradesman from settling in a German town without a license. Under this theory the governments of olden times regulated the creeds and the morals of their subjects, and upon this theory of the province of government Sir David Brewster, in an address to the British Association in Edinburgh in 1850, advocated a scheme very much like that which the Rev. Dr. Webb has advocated before you of having "men ordained by the State to the undivided functions of science, an intellectual priesthood, to develop the glorious truths which time and space embosom." That was in 1850, and it was exactly in the line of this theory that a priesthood of physic has always been advocated by certain theoretical medical gentlemen. In the reign of Edward IV. those wearing any gown or mantle not according to specification were fined. In the reign of Charles II. the length of people's boot-toes and the material of their grave clothes were prescribed by statute.

If a government is to enter upon this line of legislation at all, I submit it will be entirely proper that it should deal with the matter of health, and in so doing it ought to re-enact those ancient statutes which protected people's stomachs by restricting the expense of their tables; and, to prevent the injury which undoubtedly arises to a large portion of our

population from fashionable late hours, it ought to revive the old Norman custom and fix the time at which people should put out their fires and go to bed. Or, acting upon the opinion of an eminent French statesman,—I believe the law of France has been cited by the petitioners for your guidance,—that it was “proper to watch during the fruit season lest the people eat that which is not ripe,” the government should make it unlawful to sell or eat fruit until its quality has been approved by a medical board. And in order to make the care of the State in this example quite complete, sir, it would be well to follow the example of the Danish king, who provided by law how his subjects should scour their floors and polish their furniture.

And you should also certainly provide for the examination and license of nurses as well as physicians, for every one knows that a good nurse is of even more importance in sickness than a good physician. And following the same line of legislation, you should certainly regulate the charges of all physicians and surgeons, for if it is the duty of the State to protect its citizens against practitioners who are ignorant, it is equally its duty to protect them against practitioners who are extortionate.

The theory that a government is bound to guarantee to its citizens or subjects that every person who undertakes to practise physic or surgery shall be thoroughly qualified and competent, or, as is stated by a majority of the medical profession who ask for this bill, that the State should interpose between quacks and those who patronize them, is not essentially different from all other governmental interferences with trade. One of the most profound philosophers of the English-speaking race, Herbert Spencer, treats upon this subject as follows: “The invalid is at liberty to buy medicine and advice from whomsoever he pleases; the licensed practitioner is at liberty to sell these to whomsoever will buy. On no pretext whatever can a barrier be set up between these without the law of equal freedom being broken, and least of all may the government, whose office it is to uphold that law, become a transgressor of it. Health depends upon the fulfilment of numerous conditions.” If this legislation is designed for any purpose, it is designed to protect health.

“It can be protected only by the fulfilment of those conditions. If, therefore, it is the duty of the State to protect the health of its subjects by licensing physicians, then it is its duty to see that all the conditions of health are fulfilled by them. Shall this duty be consistently discharged? If so, the legislature must enact a national dietary; prescribe so many meals a day for each individual; fix the quantities and qualities of food, both for men and women; state the proportion of fluids, when to be taken and of what kind”—that would be troublesome in Boston; “specify the amount of exercise and define its character; describe the clothing to be worn; determine the hours of sleep, allowing for the difference of age and sex; and so on, with other particulars necessary to complete a perfect synopsis for the daily guidance of the nation. And to enforce these regulations it must employ a sufficient establishment of well-qualified officers empowered to direct everybody’s domestic arrangements.” (Social Statics, pp. 407, 408.)

#### LEGISLATION NOT NEEDED.

As I have said, Mr. Chairman, the proposed legislation is going back to a system which the people of the Commonwealth tried for many years and then deliberately abandoned. They do not need this legislation; they do not ask for it. It is in the wrong direction, and unnecessary and uncalled for by the people. Now, I want to say only a word or two more about this proposed bill, for I have talked longer than I meant to. I object to this bill, in the first place, because it assumes that a diploma never covers a quack. Take the first section of it: “There shall be established a board of medical examiners, consisting of nine men, appointed by the Governor and Council. They shall be graduates of a legally chartered college or university having the power to confer medical degrees.” Why, under that very section, it would be competent for the Governor to appoint anybody who had a diploma and who had practised ten years; and if you cannot pick out of the sixteen hundred members of the Massachusetts Medical Society—to say nothing of members of other societies, and graduates of medical colleges who are not members of any societies—nine quacks who have prac-

tised ten years, I shall be very much surprised. You cannot get sixteen hundred physicians in one body without having quacks among them, no matter what school they belong to. A diploma does not insure honesty, capacity, knowledge, intelligence, and fidelity to the profession. (Applause.) But this bill assumes it as an essential requisite. Again, the bill puts a premium on *old* quacks. It says that a man who has been a quack in Massachusetts for ten years shall stay, he shall have the approval of the State to stay; not merely stay here at his peril, as he does now, but he shall stay here licensed to practise his nefarious calling under the law. Because, forsooth, a man has been doing wrong ten years,—because he has been acting ignorantly and wilfully for ten years,—he shall have a right to go on for any number of years more; but if he has only done it one year he shall be cut off; if he has done it nine years and eleven months he shall be cut off. It is wrong! It is wrong! If such legislation means anything,—if you are going to regulate the practice of medicine and surgery at all, gentlemen,—create a standard, just as the Massachusetts Medical Society did; a standard that means something and that people can know something about. Ordain arbitrarily that homœopathy is wrong and allopathy is right, or that homœopathy is right and allopathy is wrong, or that eclecticism is right, and everything else is wrong. Then, when you have done that, provide that everybody who does not practise according to the standard shall be driven out of business, whether he has been in it one year or fifty.

Again, the bill creates another commission to be added to the numerous commissions with which the Commonwealth is already burdened. It provides for expenses of about \$6,000, I think,—\$500 apiece to the nine medical examiners, \$4,500; \$1,500 to the secretary, and expenses as great as the consciences of the secretary of the board and of the auditing officer may be elastic; all to be paid from the State treasury. (Laughter.) We don't want any more expenses of that kind than we are now saddled with.

It then gives a premium to this board to reject people. It says that an applicant shall pay a fee of twenty dollars, which shall not be returned if a certificate is refused. Now,

look at that. Here is a young man who has gone through the Harvard Medical School, or through the Boston University Medical School. He wants to practise his profession. He comes up to be examined and he fails. He is overworked, he is diffident ; perhaps he is not quite up in some branch, and he cannot be passed fairly. He fails. He has paid twenty dollars ; and I know, sir, and many people here know, that twenty dollars is a great deal of money to a young professional man when he is first struggling into life. He goes back to his studies and in six months comes up for re-examination, and then he must pay twenty dollars more. That is wrong ! If this is legislation in the interest of the people, let the people pay the expenses of examination. Do not put it upon the young men who are struggling to come into the honorable profession of medicine. Levy a tax on me and on you, and you, and everybody else in Massachusetts, and pay the expense of protecting the people by a general tax upon the people.

Again, the bill necessarily excludes persons who may do good in the healing art, who are not graduates of any medical school. Dr. Marcy shakes his head, and he ought to know his bill better than I do ; but I understand this to be the effect of the bill. In the first place it provides that after this act takes effect, "the following persons and no others shall be permitted to practise medicine, surgery, or dentistry : All persons who are graduates of a legally chartered medical or dental college. Every such person shall present his diploma to the said board of medical examiners, and, if the same be found to be genuine, and was issued by such college as is hereinbefore mentioned, etc." Now, I suppose under that, all the leading physicians and surgeons in Boston would be obliged to take their diplomas and go before this board. Imagine such men as Hodges and Cheever and Talbot being obliged to come before this board appointed by the Governor and Council, and say, "Won't you please put on this diploma of mine the evidence that I am competent to practise medicine?" (Laughter.)

Then the bill further says that everybody who is not a graduate, but who has practised medicine, surgery, or dentistry in this State continuously for the period of ten years

prior to the first day of July, 1885, may keep right on practising, but must first make an affidavit of that fact, which shall be received as true, unless the board prove it to be false. That takes care of everybody in Massachusetts who is practising at the present time.

And then the seventh section provides that "after July, 1876, the State Board of Medical Examiners shall examine all applicants for license to practise medicine, surgery, or dentistry, in this Commonwealth. Applicants must give satisfactory proof of being twenty-one years of age, of good moral character, and *of having received a diploma from some legally chartered medical college or university.*" Now, does not that make the possession of such a diploma a prerequisite to examination? Clearly it does. Under the act, if you should adopt it, a man who was not a graduate of a legally chartered medical college could not be examined for admission to the practice of medicine in Massachusetts, no matter how much he knew, no matter how good his morals were. Anybody can be examined to be admitted to the practice of law. We have had men who were good physicians, who had no diplomas; we have had men who were good lawyers and good judges, who had no diplomas. The people never yet had any profound conviction of the difference between a good doctor with a diploma, and a good doctor without one; between a good lawyer without a diploma, and a good lawyer with one.

Again, the bill creates a medical tribunal,—and this is the great objection to any legislation of this kind,—it creates an arbitrary medical tribunal, with power to take from men the means by which they get their living. Turn to the last clause of section 8: "Said Board of Medical Examiners may revoke a license for unprofessional or dishonorable conduct upon a unanimous vote, after giving the accused an opportunity to be heard in defence." Now, the suggestion was made, What is the harm in that, if it is by a unanimous vote? Turn to the last clause of section 13: "A majority of the members of said Board of Medical Examiners created by this act, when qualified according to the provisions of this act,"—I don't know how they are qualified, there is no provision for qualifying,— "are authorized and empow-

ered to exercise all the powers and perform all the duties authorized and required by said board, by the provisions of this act;" the effect of which would be, sir, that five gentlemen could call any member of the medical profession in Massachusetts before them, and without charges, without evidence, not for any crime, not for any neglect of duty, not for any malpractice in the profession, but for anything which they thought was "unprofessional or dishonorable," absolutely, and without appeal or remedy, take away from that man the power to earn his bread. No such power ought to be conferred upon any five men or nine men, or any number of men, no matter whether they act by a majority vote or a unanimous vote. A man's profession is property as much as houses or lands. And no man or woman should be deprived of the right to practise the calling by which they gain their bread, without a fair and open trial conducted under the rules of evidence and practice established by the law of the land. (Applause.) Why, sir, even a member of the bar can be removed from his office only upon charges, only upon a trial in open court, with the right to go to the full court of the Commonwealth upon all questions of law. He cannot be removed arbitrarily by any Star Chamber practice like that proposed by this bill. Under this act—under any act which will satisfy these medical gentlemen—it is in the power of a board of medical men, without remedy, without appeal, to take out of the mouth of any practitioner in the State the power to earn the bread on which he and his family live.

"You take my house when you do take the prop  
That doth sustain my house; you take my life  
When you do take the means whereby I live."

Again, I believe that under any law which you can pass, the Massachusetts Medical Society will have substantially the controlling power in the board, unless you adopt the doubtful expedient of providing that the members shall be limited to so many from each school, which I should question. I will not say it will be unconstitutional, but it would be open to very grave objections, and it is very doubtful whether you can prescribe limitations upon the appointing

power of the executive, and say he shall appoint from one school and not from another. Why, look at the power of the Massachusetts Medical Society. The law of Massachusetts provides for medical examiners throughout the Commonwealth. We have got seventy-one in all, who were appointed by the Governor and Council. How many of them do you think belong to the Massachusetts Medical Society? Sixty-two, sixty-two!— Now, I say that is a great tribute to the learning, to the intelligence, and to the ability of the members of that society, and that learning and ability will give them the control of any board of examiners which may be appointed under any law, and they know it, and that is why they want the law. But that society was just as learned and just as able, and its members were just as honest and just as judicious when the people took away from it the power to regulate the practice of medicine in Massachusetts, as it is now, and the people do not want to put that power back into their hands, by direction or indirection. (Applause.)

Again, the bill purports to give the public competent and educated physicians, but it does not prescribe a course of examination which is of the slightest consequence with regard to the great branch of therapeutics. The Massachusetts Medical Society comes here and asks you to ordain that men may be licensed to practise medicine upon an examination in "anatomy, surgery, physiology, chemistry, pathology, and obstetrics." Now, turn to the course which is required for admission into the Massachusetts Medical Society, "anatomy, pathological anatomy, physiology, general and medical chemistry, materia medica, therapeutics, midwifery, the theory and practice of medicine, clinical medicine, surgery, clinical surgery, hygiene, and public hygiene." (By-laws of Massachusetts Medical Society.) Have these gentlemen ordained a course of examination for admission into their society which they regard as unnecessary to qualify a man to practise as a physician? By no means. They have adopted a full course, a wise course. And if we are to have any examinations at all, Mr. Chairman; if the people of Massachusetts are to have any legal band of medical men licensed to practise upon them, let them be licensed under an examination

as full and thorough and complete as the Massachusetts Medical Society requires for admission into its own ranks.

Mr. Chairman, I believe that when doctors cease to make mistakes; when they cease to quarrel among themselves as they have before you; when they can control quackery within their own medical societies; and when they can keep members of their own societies from committing crimes for which they serve in the State prison and are hanged, it will be quite time for the medical gentlemen of the Commonwealth to ask that the issues of life and death in the practice of medicine and surgery shall be committed to the arbitrary decision of an irresponsible medical Star Chamber. (Applause.)

I have talked longer, sir, than I meant to talk. I have treated the subject in a very superficial and unsatisfactory manner to myself, but if I have opened any lines of thought which you, as wise and capable and judicious legislators, can pursue to a result which shall benefit, not the medical profession of Massachusetts, for they can take care of themselves, but the whole people of Massachusetts, I shall have answered the purpose for which I have spoken. I am much obliged to you for the courtesy with which you have listened to me. (Applause.)



## MEDICAL LEGISLATION.

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### ARGUMENT OF REMONSTRANTS.

DELIVERED BY DR. JOS. RODES BUCHANAN, PRESIDENT  
OF COMMITTEE OF REMONSTRANTS, BEFORE THE  
COMMITTEE ON PUBLIC HEALTH, MARCH 5, 1885.

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ON Thursday morning, March 5, Dr. Joseph Rodes Buchanan, as President of a committee of seven appointed by the remonstrants against medical legislation to conduct their case, delivered the following eloquent and powerful address before the Public Health Committee of the Massachusetts Legislature, which was frequently interrupted by the enthusiastic applause of the crowded audience which attended the hearing.

*Mr. Chairman:*—The remonstrants would respectfully say that the people of Massachusetts are firmly opposed to restrictive medical legislation; that the most liberal and enlightened portion of the medical profession are still more firmly opposed, because they understand its evils; that the demand for such legislation comes only from the illiberal portion of the profession; that it arises from their own failure to retain the public confidence, and is a movement of pure selfishness, which is hostile to justice and injurious alike to the public welfare and the improvement of the healing art.

This demand, urged by a few, was supported by false and libellous assertions, without a particle of proof. On the other hand, the remonstrants propose to establish, by competent proof, these propositions:—

1. That legislation to give a monopoly of medical practice to persons with medical diplomas would be legislation in favor of quackery, because more than nine tenths of all the quackery and malpractice come from those who hold diplomas, as we are able to prove, and because these gentlemen confess they are unable to cure cases such as cancer, which other physicians do cure.

2. That a large number of persons possess the power to heal disease without medicine, and to examine the condition of the sick with greater accuracy than ordinary physicians, or even the most eminent professors, and also to select remedies appropriate to each case without any medical education whatever, and that a vast number of our people have been healed by them, in many instances after the best physicians had totally failed.

3. That medical colleges as at present constituted do not any of them teach one half of the healing art, and that what they do teach is so imperfectly taught that more than half of their graduates are unfit even to practise their own limited system, and that these evils would be greatly aggravated if by legislation they were deprived of the wholesome stimulus of free competition. Such legislation would be oppressive to the poor, would increase the suffering and mortality of the sick, and would be felt by many thousands as a personal wrong, a gross and tyrannical outrage.

4. That independent practitioners have already saved a vast amount of money, health, and life; that they have proved themselves an extremely useful and benevolent class of citizens; that they are highly esteemed by the people; that they have a vested right in their honorable profession, and that to deprive them of this right without compensation would be a more tyrannical act than any of those which caused the American Revolution.

5. That practical medicine is not a positive science, but an empirical art, which is continually changing; that the greatest changes and improvements originate outside of colleges, against their opposition, and that to give the absolute control and possession of the whole field to colleges would be disastrous to progress, and would in the present century have prevented the development of American

eclecticism, of homœopathy, and of the magnetic practice, the three greatest improvements of the century.

6. That in the present very imperfect and unfinished state of medical science the new discoveries which are coming up with greater rapidity than ever before demand new methods of practice and new applications of remedies as the noblest work of science and humanity, which are necessarily outside of colleges, until they have attained numerical and financial strength, and, instead of being prohibited, deserve to be assisted by the patronage of the State.

7. That the bill proposed by the Massachusetts Medical Society is unconstitutional, tyrannical, malicious, and absurd, and such legislation has already proved oppressive and injurious to the welfare of the people.

8. That the only medical legislation which would promote the interest of the people is legislation to promote a knowledge of the causes and the prevention of disease, and to make them acquainted with the actual results of different methods of treatment by statistics honestly collected, as is requested in the petition herewith submitted ; and until such statistics shall have been collected it will be impossible to legislate wisely on the subject.

In this matter I am individually a representative of colleges and diplomas, for not less than twenty thousand dollars have been paid to medical colleges as fees for diplomas bearing my signature. But I am not so selfish or bigoted as to claim that the holders of our diplomas should have any exclusive privileges or legal advantages over their fellow-citizens, hence I appear for the people as Chairman of the Committee appointed by the remonstrants.

#### PROTECTION FOR THE REGULARS.

The Massachusetts Medical Society calls upon you once more for protection against fair and free competition. Of course they protest they are acting for the dear people, but the pretence is so very thin it is almost laughable. They attempt to convey the impression that the ringleaders of this movement represent the medical profession generally, but it is a false impression ; they represent only the illiberal class.

I offer you here one of the ablest homœopathist journals

published anywhere (*American Homœopathist*), in which this whole scheme of medical legislation is exposed and denounced in strong language. There may be some homœopaths who have so recently escaped from the Bastille of medical despotism that its malaria is not yet out of their blood, but they do not represent the most enlightened members of their profession.

I hold here, also, the expression of the two leading eclectic medical journals of this country, and regret that I have not time to read their scathing exposition of this great wrong against the people and the profession.

I offer you, also, the powerful plea against medical legislation made by my old colleague, Prof. John King, author of the "American Eclectic Medical Dispensatory" and other valuable medical works, when he gave the annual address to the National Eclectic Medical Association. This address was so highly appreciated by them that they ordered ten thousand copies to be printed for distribution. They had no personal interest in the matter, but they were friends of human freedom, and this was their honorable contribution to the defence of liberty for all.

You see, therefore, that the most enlightened members of the medical profession abhor such bills as an alarming invasion of liberty.

There never was a legislative scheme of monopoly and corruption so glaringly iniquitous on its face that a good talker could not make a plausible statement that would sound very well until the other side was heard. I listened carefully to all that was said, and I perceived a fatal weakness in the whole argument.

It was all based upon one broad, bold, and libellous *assumption*, for which no proof was offered. It was begging the question. The assumption was that Massachusetts was overrun by a set of unprincipled, mercenary ignoramuses, who were swindling everybody they could reach, disgracing the State, and ruining the doctors by taking the business from them. It was *assumed* that these independent doctors were such notorious culprits that the legislature ought to sentence them to professional death, without trial and without evidence that anything wrong had been done.

## THE INDEPENDENTS DEMAND A TRIAL.

If they are such notorious culprits, why not prove it by investigation, showing their malfeasance? Simply because it is impossible to be done; and investigation is what the gentlemen shun. Let a commission of inquiry be appointed, and the independent physicians of Massachusetts will prove before that commission that more than nine tenths of all the quackery is done under the shelter of diplomas, and that the existence here of independent practitioners is a blessing to the State, causing a great diminution of the amount of suffering and death, a diminution in the expense of medical treatment, and a more active progress in the knowledge of therapeutics.

The independent practitioners, with a clear conscience, demand a trial; and if the Massachusetts Medical Society has an equally clear conscience they will not shrink from the ordeal; if they shrink from it, it amounts to a confession of wrong, and they throw up the case.

I present now before you the petition which is to be presented in the legislature in which the trial is asked for. We ask for an impartial commission from the four classes of physicians who are interested, and two impartial statisticians, not of the profession, to record all the mortality in the State, with names of the attending physicians, that the people may see under what method of practice the greatest mortality occurs.

Give us such a law as that, and we will cheerfully consent that any party showing great inferiority in the results of their practice shall be prohibited from practising in this State. We are willing to abide by the rule of "the survival of the fittest."

## PASS AN HONEST LAW.

Pass such an honest law as this, and there will be a shout of joy throughout the Commonwealth. The homœopaths will welcome it, because they have had the statistics in many hospitals, and they know how triumphant the result would be for them. The eclectics would welcome it, because there is nothing more eagerly desired by them than to have the true statistics before the people. We point to

the fact that while the mortality of cholera practice under old school treatment has been from twenty-five to fifty per cent and sometimes greater, fifteen hundred patients were treated by the eclectics of Cincinnati in 1849 with a mortality not exceeding six per cent, — a fact which I can attest, having been there in that terrible epidemic and helped to collect the statistics, which have never been denied. I have heretofore proposed such a law. Every medical liberal would rejoice in it, and the patient, long-suffering healers, who have no diploma and have lived under the perpetual slander of their rivals, would celebrate the event as our people celebrate the Fourth of July.

#### A MOURNFUL OCCASION.

But I am sorry to say that there would be sad and solemn countenances in the Massachusetts Medical Society, when such an act is passed. Of all the unwholesome drastic doses that could possibly be offered to an allopathic medical society, there is nothing so indigestible, so sickening, as a dose of honest statistics honestly gathered. Dr. Forbes, the head of the profession in England, took his dose like an honest man, and confessed that under the operation of statistics his old profession seemed to be a failure.

If we do not get such a law, or if this imperious society insists on immediate action, we are ready to establish the truth by proof, ready to prove that medical diplomas are the best shelter of quackery; and as long as you are willing to hear our witnesses, we will prove that patients have been maltreated and abandoned to die until cured by independent physicians without diplomas, and that this has been going on with diversified horrors for fifty years, until, as their champion confessed last Tuesday week, homœopathy and eclecticism have grown up out of the blunders and follies of the old profession.

For this you are asked to legislate against independent physicians as if they were wolves and foxes; but where is the argument offered? Why, twenty-six States have been captured by the medical ring. I would ask, when was it that a powerful, numerous, and resolute combination could not obtain, by stubborn perseverance, legislation for their

own benefit when there was no efficient opposition? In most of the States the liberal element is not sufficiently strong or vigilant to defeat these schemes, cunningly managed and passed without due warning. But wherever the people have had enough of the independent practice to understand its merits, they are opposed to such legislation. The legislature of Maine has just given these gentlemen a Waterloo defeat. But does wicked legislation in American States, or in the European despotisms which are brought up now as our models, prove anything at all?

How many States established African slavery, and fought for it too? How many States have kept on their statute books laws grossly unjust to women? We are growing out of all these barbarisms. Massachusetts is free, but the medical ring would push back the index of time on the dial of progress and revive a system which is more rigid than even in England or Germany — a system even despotic Germany is giving up. For there no diploma is now required, and the private student can take as high rank as the college graduate.

#### A SHAMEFUL BUSINESS.

The strength of the case presented by the Massachusetts Medical Society consists entirely of their own opinions, and their libellous assertions. They offered the opinions of something over one hundred and sixty doctors in favor of a law. That was magnanimous indeed! Why did they not offer the whole sixteen hundred of their State society? Is there any man in any business who would make much objection to having his rivals legislated out of business without taking any part in the matter himself? Perhaps he would be ashamed to ask it. And it seems that nine-tenths of the society have too much self-respect to ask for the law. Those who are really good physicians do not feel the need of it, and do not wish to make a raid on their neighbors, and this was stated by the gentlemen who appeared. *It is a shameful business!* and the last time the matter was brought before the legislature only one very obscure member of the profession appeared to ask for it, and the year before that nobody appeared, and now they can only get one man

in ten to ask for it, after drumming over the whole State. I think it is much to their honor that they have given it the cold shoulder.

A few ultra-partisans come here and attempt to carry this iniquitous measure by scurrilous abuse of their professional rivals. They say that irregular or independent physicians have flocked to Massachusetts because it is free, and that this has made Massachusetts a common sewer. Such language degrades only the man who uses it.

#### BLIND AND MALIGANT SELFISHNESS

always produces a certain degree of mental obscurity—an unconsciousness of right and wrong, and this bill, concocted in the most concentrated selfishness, but purporting to represent the aggregate wisdom of the Massachusetts Medical Society, exhibits a mind blinded by malice. It actually makes it a criminal offence for a man to write his name correctly.

If a man has graduated, and is, accordingly, accustomed to write his name with a legitimate M. D. attached, but does not wish to practise, and does not register as a physician, he is liable to a fine of fifty to five hundred dollars, and *imprisonment from one to twelve months for writing his name with M. D. after it*. The proposed bill says that any one who shall append to his name the letters M. D., "shall be regarded as practising medicine within the meaning of this act." But if he does not present his diploma, and get a certificate, he is one of the proscribed class, and liable to all the penalties, for he is *considered* as practising medicine whether he does or not. It would be very wrong to consider the gentlemen fools who drafted this bill, but the virus of selfishness made them blind when they wrote it, and they thought of nothing but punishing their professional competitors. Still I have a great deal of charity for the men who are asking for this law. I can say, "'Father, forgive them, for they know not what they do.'"

They are educated in schools in which they learn no more of the true character of medical liberalism than a pupil in a Jesuit college does of the real merits of Protestantism—nay, not so much. I doubt if there is a member of the Massachu-

sets Medical Society in good standing and *orthodox*, who can give a correct statement of the principles and practice of American eclecticism.

#### DR. BOWDITCH'S AMUSING CONFESSION.

I was amused at the confession of Dr. Bowditch that he was astonished on consulting with an eclectic, to find that he was a splendid physician, never knowing till then that eclecticism claims to give a superior medical education. I can understand that men of respectability, men who are naturally just and somewhat liberal, actually believe, through the force of education, that restrictive medical legislation is just—that we have a right to prosecute and persecute men who do not believe in medical orthodoxy, and medical colleges, as Catholics once believed it was right to crush out Protestantism by law.

You do not know, because it is contrary to your education, that medical skill depends far more on innate endowment than on college education. Do you know that genius is primary and education secondary? "*Poeta nascitur, non fit*," is a principle of universal application. A great general is born, not made. A great musician is born, not made. That splendid musician, Blind Tom, owed nothing to education, neither did Zerah Colburn owe his genius to education.

#### HARVARD COLLEGE CHALLENGED.

The power to diagnose disease is a matter of innate endowment. We can find many a country boy or girl, of little or no education, who, in a clairvoyant state, can make a better diagnosis and prognosis than a whole college faculty, and there are thousands who possess this faculty in their normal condition, and can exercise it at any time. There are more than five thousand in the State of Massachusetts who can do this, and any number who are ready to swear that it has been done and is being done. Will you permit us to prove this by showing the fact in your presence? Or will you appoint a sub-committee to verify the facts? Appoint your committee, and we would challenge Harvard College to a competitive test in diagnosis.

The same innate genius which makes the diagnosis will also select the remedy, and I am very sure that if the whole medical profession were abolished there is enough of this talent everywhere to take their place, and under its guidance we should have none of those frequent and terrible blunders which are the disgrace of the profession. They are so common now that eminent surgeons in Germany, about two years ago, were not ashamed to publish, with all its details, the fact that they performed the dangerous and often fatal operation of ovariectomy on a woman—only discovering then that the ovaries were perfectly sound and there was not the slightest excuse for the operation.

Such blundering as this needs very much to be bolstered up by legislation; and the legislation desired is that which will annihilate every enlightened, progressive movement in medicine. "Some ten years ago," (says Prof. Scudder, my successor as Dean of the Eclectic Medical Institute,) "when the subject of Boards of Health was mooted in the American Medical Association, it was freely stated that the crushing out of *irregular medicine* was a prominent object. Boards of health not being effective for the purpose, a movement is now being made for State Examining Boards, before which every physician must appear, and whose certificate will be the only legal authority to practise medicine. For fear eclectics and homœopaths will not take to this measure kindly, it is proposed that they shall each have one member in a board of twenty, these members examining only in the particular tenets of the school to which they belong. It is a most admirable plan (for the purpose), but it will not become a law in our day."

In the bill offered by the Massachusetts Medical Society there is not even this small concession. They do not desire to have any liberal physician on the Board.

When a man has been thoroughly miseducated, the truth being suppressed in his education, as it is in all the old medical colleges, and when his personal interest and his party spirit and associations all support his false opinions, he looks at the question thus: We have all the world's learning, all the profound scholarship and multiplied experience of centuries in the greatest colleges and hospitals, where all doctrines

have been investigated and tried in an enlightened and liberal manner. The general agreement of the talented, learned, and experienced, must be considered decisive in any subject, and no man should be permitted to assume the responsibilities of medical practice without learning that which the common consent of able men has established as true. The man who undertakes medical practice without having this knowledge is necessarily incompetent, for there is no other medical knowledge outside of colleges of any real value; and when he offers himself as a physician he is guilty of a species of false pretence, attempting to impose on the ignorant, and such an offence ought to be punished by law.

My quondam friend, Dr. Cowling, Professor of Surgery at Louisville, expressed the idea with unusual candor by saying, "We all think that all homœopathic physicians ought to be confined in the penitentiary, and allowed to practise only on each other," and he was never rebuked for that statement.

To a man thus educated, physicians who are not orthodox are quacks or cranks, no matter how splendid their education, or how honorable their character, and those who attend no college are shameless impostors who ought to be punished.

#### EVERY ASSUMPTION DENIED.

*I deny every one of these assumptions.* I deny that all knowledge is in the colleges, and not to be had anywhere else. There is ten times more knowledge in our medical literature and libraries than we can find in any college; and any ambitious, talented young man who will give the colleges the go-by, and plunge into the vast fields of medical literature for a few years, will come out able to teach the professors without ever entering a college; and that was the way that some of our first professors were developed without diplomas. My father, reared in early times in Tennessee and Kentucky, without ever having entered a medical college, was chosen to an important medical professorship in Transylvania University, which in time became the leading school, and was certainly the peer of any of his colleagues. Therefore do I say that men who care nothing for colleges, who go to the fountains of knowledge in nature and in the library,

and care nothing for that petty badge, the diploma, are often more worthy of our respect and confidence than the men who are content to listen to professors, who are often mere text-book parrots. The text-books are higher authority than the colleges, and when the independent student finds something in text-books not represented by any college, he has at least as good a right to carry it into practice as if he had acquired it in a college, for systems of practice taught in text-books are not made any more honorable or true by being taught in colleges. I would sooner trust in practice a young man who has studied faithfully under an enlightened practitioner, and been initiated by him into practice, than the average graduate of the best college. He may be one of the most splendid physicians of the age in which he lives, and yet the colleges would like to put the brand of infamy upon him because he has not paid tribute to them. The purpose of all medical legislation is to bolster up the colleges, and give an artificial value to their diplomas. To give the medical corporations the right of selling licenses to practise in the shape of diplomas, is to abdicate the sovereignty of the State. The State alone has the right to license, and to give that power to medical corporations for their own profit is as absurd as to give a corporation of distillers the right to sell grog-shop licenses for their own benefit. If the State gives licenses, the poor student has the right when he is qualified, without becoming the slave of a medical college. I say *slave*—for it is the aim of all the regular medical colleges to establish and maintain medical slavery. Some years back it was for a time attempted both in Scotland and in one of our Northwestern States, by requiring the pupil, in accepting his diploma, to swear to follow the teaching of his professors, and to surrender his diploma if he ever learned enough to deviate from them. But this was soon abandoned.

I deny that all medical knowledge is confined to medical colleges of the orthodox persuasion or of any persuasion. I affirm that there is more useful knowledge of the healing art outside of the regular medical colleges than inside, and a large amount of useful information not in any college. These colleges have only one contracted system of practice, which does not represent the present status of medical

science. You cannot learn half of what a physician ought to know as to therapeutics in any regular medical college.

It is very easy to show this. The colleges teach the administration of medicines ; their whole armament is in the dispensary. The United States Dispensary represents the resources of the old regular party. The Homœopathic Dispensary, equally extensive in its articles, and much more extensive in the description, is another huge mass of medical resources. The eclectic system of medicine, while it does not reject anything in these dispensaries, has a large amount of remedies, chiefly indigenous, and peculiar methods of using them, a peculiar therapeutics, which make another grand accumulation of medical knowledge. And beyond these three systems of therapeutics we have still richer resources for another system. There is hydropathy, with which its votaries compete with the regular system. There is electro-therapeutics, the votaries of which also compete with the regular practice ; and there are the neurological and psychic methods of magnetic treatment, guided by clairvoyant and psychometric diagnosis.

These outside systems, ignored by the colleges, which are not yet supported by diplomas, are really richer in their stock of therapeutic resources, and may be regarded as the fourth or independent system.

Where can any one acquire all these resources ? Where is the college that teaches more than one fourth of therapeutic art ? The graduate's diploma represents only one fourth of therapeutic science, and you require four varieties of doctors to bring in all that is known of therapeutics. In other words, it takes four doctors to make a complete physician.

#### FOUR FARTINGS MAKE A PENNY.

And the regular graduate is only one of the farthing doctors who would like to pass for a whole penny, and claim that he knows everything. But no man can claim that. Medical science, in its therapeutics, is too vast for any human brain to master it familiarly. There are no *physicians*, in the full meaning of the word. We are all, with very few exceptions, only farthing doctors, and nothing more.— only specialists of

one fourth of therapeutics. And the man who is a good specialist, either for big pills, little pills, or American methods, or electric, magnetic, and intuitive methods, is a very good doctor as the world goes now.

I say again, we are all farthing doctors — but the regular gentleman who claims the highest rank is not even a whole farthing doctor (only a clipped farthing), for he does not master his own dispensatory. The regular United States Dispensatory has a little over a thousand articles; but of these, six hundred and twenty are thrown upon the appendix, which comprises many of the very best remedies known — in fact, I would as soon rely upon the appendix alone as upon the officinal list alone. But these best remedies are thrown into the appendix for empirics, curiosity-hunters, domestic practitioners, etc., and only four hundred and two are recognized as officinal, so that in his resources he has only four tenths of a farthing, less than one eighth of what a perfect physician ought to know, less even than that, for of the four hundred and two articles, he does not familiarly know, understand, and use over one hundred, or perhaps, if well educated, two hundred. And this pitifully narrow, limited system is what they wish to impose by law upon the people, depriving them really of nine tenths of the healing art. Hence I say that the regular colleges are nurseries of ignorance, and this has ever been their condition and will ever be until they are reformed.

I might refer to their most illustrious leaders and exemplars as the very *beau ideal* of therapeutic ignorance and quackery. Sir Astley Cooper stood at the head of his profession in his time, and he was in his glory when I was a student. He was in the highest positions, and his professional income was a hundred thousand dollars a year. He was a skilful surgeon, as for handling the knife, but his medical practice was that of a barbarian.

In his biography by his nephew we find this statement: "So simple were Mr. Cooper's prescriptions that he had five or six formulæ, which under ordinary circumstances constituted his complete pharmacopœia, and such medicines he kept constantly made up. His remedies were *limited in number and but little varied in use*, for he never had any

confidence in an extensive variety of medicines. I have heard him say, 'Give me opium, tartarized antimony, sulphate of magnesia, calomel, and bark, and I could ask for little else.'"

On another occasion he said he could take his five remedies and with them beat all the country doctors. Oh, heaven, what a set of doctors they must have been!

With these five remedies, what could we do for a consumptive patient? We could only help him to die with different symptoms; and at that time consumption was considered incurable.

What could we do in cholera? The mortality under such treatment is over fifty per cent.

What could we do in diphtheria, in scarlet fever, in erysipelas, in paralysis, in meningitis, or in obstinate skin diseases? There is not an intelligent physician to-day who would not pronounce such practice gross and abominable quackery.

The professor of practice, John Esten Cooke, whose instructions I listened to, was perhaps worse than Sir Astley Cooper. The drift of his instruction was that with three remedies, calomel, aloes, and rhubarb, nearly all human diseases were to be treated, and he acted on his system—he gave calomel in teaspoon doses, and in one case of cholera he gave a pound and a half before the young man died.

I think no intelligent man will deny to-day that, so far as the pupils of Cooper and Cooke followed such examples and teaching, they practised a horrible system of quackery.

#### LEGAL QUACKERY.

Under such a medical law as is proposed, that kind of quackery would have been forced on the people. But you say this is obsolete. In forty years we have changed all that. Very true; and every thirty or forty years the whole system is changed and condemned, but *while the quackery flourishes, the people must be forced to submit to it.* They must be compelled to submit to-day to what will be pronounced quackery thirty years hence. An unfinished experimental art must be forced upon the people who loathe it, who are to be treated

like children and forced to submit. There are many in Massachusetts who would rather die without medical help than submit to this.

The people abhor such legislation. You can feel the heart of Massachusetts pulsating in this large and intelligent audience, and you perceive that it is unanimous against this tyrannical legislation.

You cannot educate a competent physician, if he is to be educated by men who are following dogmas as a trade, while they have no sincere faith in the virtue of what they are doing. I say the leaders in old school medicine have no faith in their art.

I refer to Dr. Forbes of England and Dr. Holmes of this city, the witty poet, who said it would be better for mankind if all drugs were emptied into the sea.

I have the recorded confessions of over thirty of the most eminent medical teachers and authors, showing the worthlessness of their art. They use language that I would not use. I believe they slandered medical science. But they are authorities and leaders, and they are competent to confess the worthlessness of all they know and do. The list embraces the two highest authorities in medical literature — Dr. Forbes of the *British and Foreign Medical Quarterly*, and Dr. Jas. Johnson of the *British Medico-Chirurgical Review*, the two most eminent medical reviews in the world; Magendie, the greatest physiologist of France; Sir Astley Cooper, the greatest surgeon of the age; Mott and Parker, the two most eminent physicians of New York; Prof. Bigelow and Prof. John Ware of Boston, and the illustrious Benjamin Rush, John Mason Good, and Abernethy of London. These and twenty others are on record against the old school of practice, and, as a sample of their opinions, I quote the language of Dr. Jas. Johnson:—

“I declare as my conscientious conviction, founded on long experience and reflection, that if there was not a single physician, surgeon, midwife, chemist, apothecary, druggist, nor *drug* on the face of the earth, there would be less sickness and less mortality than now prevails.”

I deny all this; and no doctor ever talks that way who is not a narrow-minded bigot, unacquainted with the best resources of the healing art. No homœopath, no eclectic,

no genuine independent ever uttered such a sentiment. You are asked to consign the people to the care of these men, who confess they are failures, and to the care of their pupils, their graduates, whom *they say* are a great deal worse than their preceptors, for the majority of them are not qualified.

It is not my assertion, but the assertion of the champions of this medical bill, that the parties who claim this monopoly are in the main incompetent. Dr. Talbot says that the majority of medical colleges were established not to teach medicine but to sell diplomas, and yet he wants them to have a monopoly for the quacks they have sold diplomas to.

#### IGNORANT GRADUATES.

But I have still better authority. I go to the National Medical Association, whence all the gods of the medical Olympus send forth the law to their subjects. I find that Dr. Gihon, Medical Director of the United States Navy and President of the Naval Academy, made a report most wonderfully honest and true, to the National Medical Association, when it met at Cleveland. He says that of one thousand one hundred and forty-two practising graduates of regular medical colleges, seven hundred were too ignorant to pass the Naval Examining Board. He says: "Many of these have doubtless learned something of the art they began to practise in the dark, yet most of them have only learned to see as the blind see, and at what a fearful cost of human life!"

It is not merely technical and unimportant ignorance that he charges, but gross and disgraceful ignorance and illiteracy.

One gave the normal temperature of the body in "helth" as 70°; another as 92°; another, from 112° to 140°. Another said, "The average respirations are seventy per minute." Another wrote, "The ureter is the *duck* of the kidney."

Dr. Gihon says another defined pneumonia to be a particular disease of one lung, and pleurisy the name given it when it affected the other side. Another advised cauterization of the soles of the feet in congestion of the brain, and "using the actual cautery for poor people and nitrate of silver for rich patients, that they might not be discommoded by the smell of burning flesh."

A graduate of unimpeachable regularity said that "Campher is an auromatic gum from the ilands of the see."

Of these blunders Dr. Gihon says: "I have taken them from the *graduates* of schools of established reputation, in order to prove that no one school, however exalted in rank, can claim exception from the charge of having as graduates grossly illiterate and incompetent men, and that diplomas have been sold, not cheaply and openly, but still for a *price*, meaning two full sets of tickets, a matriculation and a graduation fee."

The illiteracy was shown in spelling such words as blud, medasin, medicle bord, vigitable, pluracy, finguers, thyghs, helth, sode, shure, wair, scassity, interlec, and *aurora epileptica*. He was probably thinking of the aurora borealis.

Dr. Gihon says further: "I have seen the spermatic cord demonstrated in a female subject. I have witnessed the application to fractured limbs that would have deformed the sufferer for life; prescriptions written that no apothecary could decipher or compound, and others compounded either with fatal doses, deliberately prescribed, or ignorantly and carelessly weighed, which it would have been eminently proper to have required the exhibitor to have swallowed.

"Some of the revelations of the examinations would be amusing were it not for the lamentable facts that many of their authors have been *for years* intrusted with the lives of their fellow-beings, and this by the authority of the most respectable regular colleges in the United States."

And it is for these quacks that you demand a monopoly. Dr. A—— spoke of the literary ignorance of people who do not profess to be educated, but who by the divine gift of healing power have gained a large patronage at his expense. We are prepared to show that they know more than he does about the healing art, and that his professional blunders have been rectified by the very people whom he is trying to crush.

Dr. S——, who made the best speech for a bill (not this bill), uttering a great deal of good sense, is, I believe, a good physician, for he says he studied both the regular and the homœopathic system, and therefore his therapeutics is not a farthing but a halfpenny. He says that he has cured ninety-nine in a hundred, and I am willing to believe him, because I know that an eclectic in New York, who came as near to

being a complete physician as any one I ever knew, cured a hundred per cent, and for several years having no deaths to report in a large practice, her name was forgotten at the Board of Health.

It is singular that Dr. S——, unlike other good physicians, is not willing to rely on his merits, but wants protection against competition. Perhaps the reason is that he is not quite omniscient; and I know of one case that he did not cure with all his resources. The woman whom he was unable to cure, whom he led to the border of the grave and announced that her death was impending then, had some independent assistance. One of those divinely-gifted, good women, who are able to heal, and also able to see into the condition of the patient, came in as an attendant (I mean Mrs. Critchley), sat up and labored with the patient all night, and by morning she was saved, and she recovered.

Now, if I understand him rightly, he wants the law so changed that when he conducts the next patient to the borders of the grave, when all hope is gone, no one shall be allowed to come in and save the unfortunate victim of medical colleges and medical legislation. He asks you virtually to pass a sentence of death upon all outside of his skill, or outside of the skill of men far less skilful, who do not know more than half of what he knows. He wants this effected by legislation.

Now, I know of no legislation ever proposed in this country which would be so great an outrage upon humanity and justice. It would send a thrill of horror and consternation into many a Massachusetts home, and it may come even to yourselves, on what is supposed to be your dying bed, to lock and bar the door against hope, and hasten your departure to that better world where we must all go in a very few years, and where the memory of such an act must follow you as we stand in the sphere of divine justice with an awakened conscience, to meditate upon all the wrongs we may have done to our fellow-beings.

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Medical legislation is so foreign to the spirit of American progress that its ultimate abolition is certain. In several

States the acts have been pronounced unconstitutional. The legislatures of Maine and Ohio have rejected the proposed medical legislation in their recent sessions, and in Arkansas the regular medical profession has become convinced of the uselessness of such legislation. At the late meeting of the State Medical Society the president urgently recommended the dismissal of the Committee on Medical Legislation as useless and impolitic.

PLEA OF  
Prof. Charles Wesley Emerson, M. D.,

*President of Monroe College of Oratory, Boston, Mass.*

BEFORE THE LEGISLATIVE COMMITTEE ON PUBLIC HEALTH,  
BOSTON, FEBRUARY, 1880.

*Mr. Chairman and Gentlemen:*—I wish before speaking on this proposed bill, to define my individual position by saying, first, I do not practise medicine, neither do I wish to, nor have I any personal friend practising or wishing to practise, whom this bill would in the least affect. I am not here in the interests of any person or class. Many of the members of the State Homœopathic Society, as well as very many members of the Eclectic State Medical Society, together with some of the members of the Massachusetts State Medical Society, have petitioned you not to recommend legislation on this subject. But I do not represent any of these societies, nor do I represent the Spiritualists who oppose this bill. I am not a Spiritualist, and have no belief in it whatever. I object to this bill because it is opposed to the well-being of the people of this Commonwealth, *by impeding progress in the art of curing disease.*

The President of the Massachusetts State Medical Society stated to this committee that the most useful information he had ever received was given him by a nurse. We have only begun to learn the practice of medicine. Scarcely any branch of it can be called exact science. There are some things to be learned yet, even in anatomy; and much in physiology. Progress in these two departments we must necessarily look to the learned for, but it does not follow that these learned scientists will be graduates of any medical

college. The facts go to show that a large number of the discoveries in these sciences have come from men who are not M. D.'s. Some of the names that stand the highest on this continent, and the other, as discoverers and authors, whose books are looked upon as the best authorities contributing to the knowledge of anatomy and physiology, have never graduated from any medical college. Yet this bill, if passed, will prevent such men, not only from practising medicine, but even debar them the privilege of an examination. It might seem to those who have only superficially examined this bill that it is at least an intended stimulant to education. But it is not even this; for it will not permit a man to practise on the ground that he can pass a creditable examination on all the branches supposed to be requisite to a thorough medical education, for it will not even examine the candidate unless, in addition to his knowledge and fitness, he also presents the board of censors a diploma from some approved medical college. Disguise it as they may, the regular M. D.'s of Massachusetts are simply asking for a monopoly, by the guarantee of a legislative enactment.

#### PRACTICAL PROGRESS COMES FROM THE UNLEARNED.

Progress in anatomy and physiology, as we have stated, comes in the nature of things from the learned, but the progress in therapeutics (the meaning of which Webster defines "that part of medicine which respects the discovery and application of remedies for diseases") has, and still continues to, come from the unlearned. The *materia medica* is almost entirely made from the discoveries of the unschooled. An entire change in the treatment of diseases has taken place in all schools during the last fifty years. Prior to that time the human system was literally loaded with mineral poison by the doctors, they vainly hoping that disease was not merely lack of health, but an entity, that could be killed by pouring deadly mineral poison into the body of the patient on the one hand, and on the other drawing away all the good blood in the arteries. Samuel Thomson was the first successful innovator upon this horrid system of practice; and he was an uneducated farmer, who could barely write his name. The ignorance in the learned profession was so great

at that time concerning the remedial properties to be found in the vegetable kingdom, from which Thomson drew all his medicines, that upon Thomson's losing a patient he was arrested for wilful murder; and at his trial the poison of which the patient was said to have died was brought forward by a regular M. D. of this same school in whose interest they would have you pass this bill. Upon examination it was discovered to be the harmless root of marsh-rosemary, used in making common candy at the present time. The cures this man wrought wherever he went seemed, in contrast with the success of the regular practitioner, to be little less than miraculous. The news of his wonderful cures spread abroad, not by his advertising them, but it was told from man to man. The people rejoiced in the new light, the physicians tried to suppress him, but the people would have him. At last the doctors said, If the people will be doctored by this quackery, viz. roots and herbs, we cannot lose our practice; and hence we are compelled to sit at the foot of this ignorant old "quack," and learn what he gives, and how he performs these wonderful cures. And so Thomson's remedies are now used by every medical school, though they still decry his name. And these compounds of Thomson's, and his many discoveries, to the number of more than one hundred, are sold by all druggists in America and Europe. His system now is a part of the recognized system, even among the members of the Massachusetts State Medical Society.

The water cure system has a similar history. So of all the different elements that now compose the regular practice. Every one was fought in its turn by the regular schoolmen; but the people were benefited, and therefore, notwithstanding it has ever been made scandalous to employ a person outside the regular practice, yet, "all that a man hath will he give for his life." So these systems the regular schools were compelled to adopt, or else be left among the fossils of the past.

Dr. SWEET AND PROF. MORSE.

I brought before you a member of the family of the far-famed "natural bone-setters." For two hundred and fifty years their system, called the "rotary" system, was fought back by the colleges of medicine, and kept out of the regular

practice until the people were determined to have this graceful and easy method of bone-setting; and then the regulars were forced to adopt it; and again the schoolmen were compelled to move forward a step. Now they say, "Do not let any more men practise outside the regular system, for we are tired of moving on. We wish to draw our robes about us and rest. We might have been resting these hundreds of years had it not been for the 'quack' compelling us to learn first this improvement in medicine and then that, or else lose our practice and stand one side and see the money all go into the pockets of the man who cures, he having plenty and to spare, while we starve on our 'sheepskin.'"

It seems at first thought, very strange that these marvelous improvements in treating disease, and even in bone-setting, should come from persons who have not read, and can give no scientific name to the diseases they cure, or even tell the anatomical names of the bones they set; yet these are the facts, and not even the promoters of this bill will dare attempt a denial of them. But this seeming eccentricity of nature is not alone confined to discoveries in the healing art, but is true of nearly all the improvements. Common people give us our improvements, and the schoolmen spend their time in giving Greek and Latin names to these improvements, and building metaphysical theories concerning them. George Stevenson, the inventor of the locomotive, could scarcely read—he was a poor, ignorant collier. He knew nothing of the laws of mechanics, never heard of a school of technology. Yet nobody thought the less of his invention because he could not pass an examination concerning the very principles of mechanics which he had been applying. Even Morse, the inventor of the electric telegraph, was not a scientist, and could not have passed a creditable examination before any college board of examiners; yet we do not think the less of these wires which, like so many nerves, bring into harmony all the families of man.

Again, disguise it as the friends of this proposed bill may, *the measure is a proposal for class legislation!* The immortal Lincoln said: "This is a government of the people, by the people, and for the people." This bill proposes to govern the people for the doctors, and by the doctors. It is even

worse than that ; it proposes to put this monopoly, not into the hands of all the educated, graduated physicians, but into the hands of those who happen at this time to be members of the different State medical societies.

#### MEDICAL LEGISLATION PROMOTES QUACKERY.

The object of the petitioners for the passage of this proposed bill is to make the number of physicians in the State small, and thereby constitute the greatest money monopoly ever heard of in this country, or any other. Then every member of the profession in this State will have security of practice, whether he helps or hinders the sick, and they will not only have plenty to do, but can charge whatever price they please for their services, and there is no appeal ; for there is no other doctor permitted to practise, without pains and penalties.

The real purpose and intent of the bill is hidden under two very popular disguises. First, *that of a higher standard of education*, and secondly, *the extermination of "quackery."* We will notice these points in their respective order.

*First, Is this bill in the interests of higher education?* We have already shown that it will hinder progress in medical knowledge. Let us see what the bill actually does by its licenses and prohibitions. In the very start it gives all the members of the various State societies a license to practise without an examination. And yet many of the members of these various State societies, it is well known, have never received a diploma from any medical college, and many others who have a diploma in said societies took it from some one of the very colleges this Board of Examiners will condemn.

Much has been said condemnatory of the ignorance of many doctors who are *outside* the pale of these State societies. I will offset that by stating something concerning the ignorance of those *inside* the pale : A druggist asked a gentleman the other day what he would make of the following : "Ag Moni." The gentleman, although a learned physician, did not know, neither did the druggist. Another member of the Massachusetts State Medical Society was asked to state what a common dose of morphine is. He replied, "From one

to five grains." In one of your highly approved medical colleges of this State the old caloric theory of heat was taught five years ago, and is to-day for aught I know. I should hope that learned (?) professor would not be on the Board of Examiners provided in this bill; for in that case no true and accepted scientist could get a license, simply because he would answer correctly, and the professor would not know it.

Much has been said about the manifest ignorance of "quacks" who sign certificates of death. Did they give us anything that could excel the following from a regular M. D.? "Not certain of the cause of death. Don't know whether it was scarlet fever or from eating too much Bellona sausage."

They tell you this bill is for the purpose of weeding out pretenders; but they do not tell us how it is to work this most desirable change. They raise a great cry about "quacks." A "quack" simply means one who pretends to do something he cannot do. That there are such pretenders in the medical profession, and in every other profession, nobody thinks of denying; but far be it from me, or any opposer of this bill, to defend such. The people all have a common interest in rooting out all such, and many persons have signed the petition for the passage of this bill because it was represented to them that this would exterminate that obnoxious race; but has any one shown us how this bill, if passed, has any power to sift them out? It has no such power, but, on the contrary, it protects them. It is a wall of fire around all the "quacks" who are inside the medical societies, and where is the man who possesses the audacity to say that there are no "quacks" inside these societies? Yet this bill will compel the people to employ them, because no choice is left them, for the number from which to choose, should such a bill as this pass, would be kept exceedingly small. Note another means which this bill provides for keeping the number small.

By the terms of this bill no one is eligible to an examination merely because he is sufficiently learned, or has graduated, unless he shall have graduated from a college which they approve. Thus their power is wholly arbitrary.

They can cut down the number of candidates, at any time, by disapproving the colleges from which they graduated, though every such college holds a charter from the State in which it exists. Again, another means is provided for lessening the number of physicians, in the clause about "a good moral character." The Bill provides that any person having a good moral character shall be licensed, if such person has practised within the State ten consecutive years, yet, although this looks very fair on the face of it, by looking a little deeper we shall see that no criterion of morals is established, but the matter is left wholly to this Board of Examiners. How easy and how consistent is it with the entire spirit of this bill to say, "If you have practised ten years without being a member of our society or having studied medicine in the regular way, you are a 'quack,' and you have been humbugging the people ten years, and no license shall be granted to a man who is immoral enough to humbug the people for that period." For if this bill means anything it means to teach that all persons who have not been through a medical college are humbugs unless they belong to one of the State medical societies. Thus all such can be cut off.

They tell you of criminal practices among "quacks" that this bill will put a stop to. Gentlemen, I hold in my hand the names of four physicians now residing in this city, who are members of the old Massachusetts State Medical Society, in good and regular standing, who have been before the court for the crime of producing abortion, and also the name of one who is now serving his time in the State Prison for arson; so that it seems that the Massachusetts State Medical Society is not in a condition to "cast the first stone;" but still it asks that you throw around them, by special legislation, the arm of the law, lest people shall employ better men outside the regular societies.

#### IT VIOLATES THE RIGHTS OF THE PEOPLE.

Again, this bill takes away, without compensation, an honorable and successful business from a large number of persons, which is most unjust and cruel. And what does this law propose to call a crime? Simply this: the restoring

to life and health a human being. This bill does not ask the question, "Does this man cure the sick?" No; if he cures him twice, it makes him pay one thousand dollars; if he cures a patient three times, it imprisons him. Surely such a law is nothing better than barbarous.

Again, I object to the bill because it practically puts into the hands of one medical society arbitrary power; and that society so hostile to the other societies that, according to the testimony of the president of that society, they will not counsel with a homeopath or an eclectic, though the patient calling for counsel is dying and this counsel will save his life. This rests not alone upon the testimony of this president; it is one of the rules of the by-laws of said society. This bill would force the two small State societies into the very jaws of this inhuman lion; although one quarter part of the members of one of these societies have sent in their written or verbal remonstrance; and a large and influential part of this other society also join in the remonstrance, led by no less a member than its worthy secretary, Dr. Morse, of Salem, a man of high social standing and extensive practice. Other eminent homeopathic physicians of this city, members of the State society, and professors in the Medical College, sent up their names, but you have not had time to hear them.

Again, I object to this bill because it proposes to legislate away the sacred rights and dearest privileges of the people. What is so sacred to a man as his own life? Yet this bill proposes he shall not be allowed to choose the means of his own recovery if he is ill.

#### THE CLERGY NEED THE SAME PROTECTION.

Let us notice the ground upon which the petitioners ask for the passage of such a bill.

1st. They claim that the medical profession needs protection from the competition of "quacks," and to this end they brought a bishop from, I do not know where, neither do I know what he was bishop of—I only know the lawyer for the petitioners was very careful to make you understand he *was* a bishop. This bishop said the medical profession was a very honorable one and needed protection; he said also

that the clergy needed protection just the same as the doctors, because there were so many "quack" preachers. Now what is the burden of this argument? If it means anything it means, "We hope you will pass a bill to protect doctors this year, and then a bill next year cutting off all ministers from preaching who are not in this [or in some other bishop's] diocese." I admire the candor of that bishop, and I feel greatly obliged to him for helping our side so much. If we had said that there is no difference between the doctors asking for a bill to protect them, and that of ministers asking one to protect the clergy, the advocates of this bill would have said there *was* a difference; but now that it comes from one of their own choosing—one that they had brought here *because* he was a bishop, thinking thereby, as they have in several other instances, to overawe us—it strikes them dumb that this good, simple-hearted bishop, should, all unintentionally, "let the cat out of the bag," by saying, in substance: "Please pass this bill for the doctors, and then pass one for us ministers, so that we can get larger salaries, for we need more money as much as the doctors do."

They have brought you the names of other prominent clergymen. What we would like to know is, whether these clergymen who sent in their names for this petition know what they are doing, and are, hence, using this as an entering wedge to bring back the oppression of the ages gone by, or whether they do not see the bearing of this bill. I am happy to say I incline to the latter opinion; for I know a number who signed this petition who are now sorry, saying they would never have signed it had they known its full meaning. All they meant by signing it was to get rid of pretenders, but they now see the bill is not calculated in the least to do that, but is simply asking for the most crushing monopoly that ever bore down upon the common people. All this cry for the medical societies, all this telling how the poor members of the medical societies have flat pocket-books because the people will persist in employing other physicians, is contemptible. Poor, poor regulars! how hungry they go because the people are not compelled to take their calomel, and prefer the harmless root-and-herb doctor!

Why, all this lamentation in behalf of the doctors, because they may not compel the people to employ them, makes me think of the little boy whose mother was showing him a picture of Daniel in the lions' den ; the little fellow began to cry bitterly, when the mother said : " You pity poor Daniel, don't you, because the lions are going to eat him up ? " His reply, amid his sobs, was, " I was not thinking anything about Daniel. I was thinking about that poor little lion in the corner, who won't get any, 'cause the old lions will eat him all up first."

#### MALPRACTICE AMONG THE REGULARS.

In all this cry for a bill to protect the members of the old medical societies, not a word is said about the common people, whom Daniel represents in the lions' den. This bill takes away all possible competition, which is the only safeguard of the people.

No price for medical advice or treatment is mentioned in this bill. All is left to the nine despots of the proposed Board of Examiners, clothed with absolute power, and these despots are the interested party. They may say, if the price is too high, people need not employ the doctor. But what kind of an apology is that ? People cannot help being sick, and they cannot lie and die, as the monopolists very well know ; hence from those members of the medical societies, who have no practice now, and who, for want of natural fitness, ought never to have any, the people will be compelled to employ. Why, gentlemen, when I think of the inhumanity of this bill, and practically those who advocate it, I am dumb with horror. The grocers might as well band themselves together and ask for legal monopoly. The friends of this bill tell you there is an immense amount of malpractice among the outside doctors, yet they have failed to point out a single case. Go look at the law reports, and you will find scarcely a case of malpractice outside the members of these societies, while the reports of those inside are innumerable. They talk to us as though we had no law now to regulate the practice of medicine, when the truth is we have laws that cover every imaginable case of wrong doing, in this matter, that law can cover.

We have already, for instance, a law that if a man advertises himself as M. D., when he has not that title, he can at once be arrested for obtaining money under false pretences, and the penalty is State prison. Again, we have the strictest laws concerning malpractice, making bad or injurious medical practice also a State prison offense. Now, I ask in all candor, what more do we need? No further legislation is possible without abridging the rights of the people by taking from them power to choose for one's self what physician he shall have.

Please notice this is a contest not between "quacks" on the one hand, and educated, honest physicians on the other, but, simply, may the people elect the person they wish to treat them when sick, or may they not?

No testimony whatever has been brought, during this protracted hearing, against the practice of those who work outside the regular schools. Mark one thing in all the testimony presented: not a physician among the "irregulars" has appeared; they have all modestly stayed in the background, while their works have praised them. The witnesses are persons in every walk of life except the doctors. Every one who has testified has stated that he was first given up to die by the regular physicians before he employed one of the outside physicians. The regulars have no reason to complain, for all these persons gave them the first chance, and in many instances were doctored by them until they had no money left to pay the outside doctor who finally cured them. Does not this crowd of witnesses show plainly that if you will legislate some way, it certainly should not be against those who wrought the cures?

The President of the old Massachusetts State Medical Society declared to you that cancer could not be cured. Thus through the month of their chief, the regular physicians declare they cannot cure cancer; yet I have brought witness after witness to testify that they have been cured of cancer by these irregular physicians, whom this bill would cut off from practice. One might say these were another kind of tumor, and not cancer; but we have been careful to guard that point by proving, in every case, that the regular physicians pronounced it a cancer, and incurable. The Pres-

ident above referred to said it was a blood disease, and hence incurable. The cases we have presented here have been well ever since the cancers were taken out, and they were taken out years ago. They testified that the doctors who cured the cancers gave them medicine for the blood at the same time. Thus we have proved that these cancer-cures take the cancer out without the use of the knife, and that their knowledge of blood remedies enables them to eliminate all tendency to cancer from the blood. Can the people afford to be deprived of doctors who are known to cure cancers in innumerable cases, and be compelled to content themselves with a class of physicians who come in here and testify to you that they cannot cure a cancer? Cancer is a disease more dreaded than any other, and yet a very common disease. Think of the despair of the poor patient, when he is told by one of the doctors whom this bill would protect and give the monopoly to, "You have a cancer, and I am powerless to help you. You must be eaten up slowly by this most loathsome disease, while yet alive." Imagine this bill taking effect as a law, and though the dying patient begs of the old cancer-curer for help, he dare not, for the prison walls loom up before his sight.

#### THE VOICE OF DESPOTISM OR THE VOICE OF THE PEOPLE.

Who have favored this bill beside the lawyers, who were hired to do so, and a few physicians? Did the honored President of the Boston University? To be sure, he was brought before you to advocate that side. Did he do so? *No!* He warned you against putting so much power into the hands of one class. Not once did he favor this bill by a single expression. His arguments were all on the other side, telling you of the tyranny concerning this medical matter in the despotic states of Europe. Did he ask you to follow the example of those old oppressive governments! *No!* Did the President of the Young Men's Christian Union favor this bill? He did not say one word about the bill.

The advocates of this bill tell you the people need the guardianship of the Medical Society, *because the people don't know what they want.* This has ever been the voice of despotism. I will not go over the testimony in detail; I

will content myself by mentioning a single case, which you recognize to be a fair representative of the testimony which has come before you, throughout this entire hearing.

Mr. Nye of Augusta, Me., sent to this honorable committee a letter, asking you not to recommend any legislation in favor of any such law as this bill proposes, in which he gives a statement of his own cases and others. Permit me to tell you who this man is. He is superintendent of an Orthodox Sunday school. He has been treasurer of the Maine Central Railroad for seventeen years, and for many years State Commissioner of Insurance, also Centennial Commissioner from Maine; a man of the highest standing. This gentleman testifies that he was taken ill while on a visit to West Point, some ten years since, with sciatica. The eminent surgeon of the place attended him, but gave him no relief; finally told him he could not hope to be better for one year, at least. He then came home and employed the most eminent of the Maine doctors, but with no success. Finally, a magnetic healer (a resident of Boston), cured him with one treatment. Mr. Nye also speaks of the case of his wife, who had a cancer. The best doctors of Boston, the most eminent in the regular faculty, were consulted. Finally they decided that within ten days the knife would be her only chance of prolonging life. A clairvoyant said, "Do not use the knife." A magnetic healer was then employed, and the wife was cured. This was ten years ago, and the wife has been well up to date. These, gentlemen, are not isolated cases, but of every day and hour occurrence, in every part of the State.

Gentlemen, although I do not, like my brother Giles here, believe spirits of the departed produce these cures, yet we all must believe that some great physiological law is here involved, the discovery of which is of the highest value to mankind; and I ask you, in the name of God and humanity, not to recommend a bill that shall cut off these benefactors from practising within this Commonwealth.

You must have noticed the great crowd that has attended this hearing from the first. You also have not failed to notice, by their demonstrations, that they are utterly opposed to this bill, and most of them eager to testify what great

good has been done them by the persons whom this bill will cut off. A mother became so anxious that, although the time was filled, yet she cried out to you from the depths of her grief and fear, in the name of God, not to pass this bill, for her life and that of her friends had been saved by these persons of natural medical genius.

#### THE PEOPLE WANT THEIR FAVORITE PHYSICIANS.

I but voice the prayer of the vast majority of the citizens of this Commonwealth when I pray you not to deprive us of the help of those persons who have again and again proved themselves possessed of the natural and improved gifts which make them *the* physicians! Will you take away the persons who have been our family physicians for years, in whom we have the utmost confidence, who have saved us and our little ones when all scholastic skill gave us up to die, and in their places compel us to take the young man just passed from the hand of this board of censors, with no other claim upon our confidence than the fact that he has a good memory or is the son of a rich father who would have him a professional man, because it gives him higher caste in society, when, according to the laws of his organization, he should have been a coal-heaver, or at best a shoemaker?

The subject before us is of the gravest character. It is a matter of individual choice in a case of life and death. In the simplest words possible, we pray you not to take away from us, the common people, the one we choose to stand by us in the hour of our sorest need. Do not take away from us—who believe that Dr. Morse, of Salem, who was for years a professor in the medical department of the Boston University, spoke the truth when he said that some men were born physicians, and such were always successful practitioners, even if uneducated, while he knew many who, though having graduated from the oldest medical college in Massachusetts, were never known to help a patient—the power to choose these natural physicians, to whose wonderful cures so many testify.

The natural physicians will not go to your approved medical college; they have methods of study peculiar to

themselves. Think of the "Sweet family of natural bone-setters" being compelled to go through a medical college in their time, when in after years every medical college was obliged to learn of them, or the college go unpatronized. They say: "These men may go to college if they have this natural genius." That is easily enough said, but will they tell me when in the history of the world David would wear Saul's armor when he went out to fight the giant? They will simply give up practice if you pass this law, and we shall be deprived of their most valuable services. I do not plead for them. *They do not need us: WE NEED THEM!* The man of genius always stands on the dignity of his God-given powers, and says to the world what Edmund Burke said when he was finally shut out of Parliament: "Gentlemen, I can afford to get along without you, if you can without me." It is the fifth-rate men who go down on their knees, crawling in the dust to get place and power, as amply illustrated in the little fifth-rate doctors who ask for this monopoly for their benefit. Not one of the doctors the old school calls "quacks" has appeared here asking you not to pass this bill. They can afford to stand back as they have stood. But we, who wish their help, cannot afford to stand back and see our rights taken from us, not only the right to liberty and the pursuit of happiness, but the right to life; unless we can live in spite of all the poison that the old allopath would pour down our throats, and charge us what he pleases for.

*The people do not want this bill, therefore I pray you will not recommend it!*



# HERBERT SPENCER

ON

## MEDICAL FREEDOM.

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THE GREAT ENGLISH PHILOSOPHER'S ARGUMENT FOR THE  
LIBERTIES OF THE PEOPLE AGAINST MEDICAL  
CLASS LEGISLATION.

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*(Every thinker and person of cultivated tastes, whether he be statesman, scientist, physician, lawyer, or divine, must entertain a profound respect for the splendid brain of Herbert Spencer.)*

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THE FOLLOWING IS FROM HERBERT SPENCER'S "SOCIAL  
STATICS," UNDER HEAD OF SANITARY SUPER-  
VISION, CHAPTER 28.

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THIS theory, of which Boards of Health and the like are embodiments, is not only inconsistent with our definition of State duty, but is further open to strictures, similar to, and equally fatal with, those made in analogous cases. If by saying "that it is the duty of the State to adopt measures for protecting the health of its subjects," it is meant (as it is meant by the majority of the medical profession) that the State should interpose between quacks and those who patronize them, or between the druggists and the artisan who wants a remedy for his cold,—*if it is meant that to guard people against empirical treatment, the State should forbid all unlicensed persons from prescribing—then the reply is, that to do so is to directly violate the moral law. Men's rights are infringed by these, as much as by all other trade interferences.*

The invalid is at liberty to buy medicine and advice from whomsoever he pleases; the unlicensed practitioner is at liberty to sell these to whomsoever will buy. On no pretext whatever can a barrier be set up between them, without the law of equal freedom being broken; and least of all may the government, whose office it is to uphold that law, become a transgressor of it.

Moreover, this doctrine, that it is the duty of the State to protect the health of its subjects, cannot be established, for the same reason that its kindred doctrines cannot, namely, the impossibility of saying how far the alleged duty shall be carried out. Health depends upon the fulfilment of numerous conditions — can be “protected” only by insuring that fulfilment: if, therefore, it is the duty of the State to protect the health of its subjects, it is its duty to see that all the conditions of health are fulfilled by them. Shall this duty be consistently discharged? If so, the legislature must enact a national dietary; prescribe so many meals a day for each individual; fix the quantities and qualities of food, both for men and women; state the proportion of fluids, when to be taken, and of what kind; specify the amount of exercise, and define its character; describe the clothing to be employed; determine the hours of sleep, allowing for the difference of age and sex; and so on with all other particulars, necessary to complete a perfect synopsis, for the daily guidance of the nation: and to enforce these regulations it must employ a sufficiency of duly qualified officials, empowered to direct every one’s domestic arrangements. If, on the other hand, a universal supervision of private conduct is not meant, then there comes the question, Where, between this and no supervision at all, lies the boundary up to which supervision is a duty? To which question no answer can be given.

*There is a manifest analogy between committing to government guardianship the physical health of the people, and committing to it their moral health. The two proceedings are equally reasonable, may be defended by similar arguments, and must stand or fall together. If the welfare of men’s souls can be fitly dealt with by acts of parliament, why, then, the welfare of their bodies can be fitly dealt with likewise.* He who thinks the State commissioned to administer spiritual

remedies, may consistently think that it should administer material ones. The disinfecting society from vice may naturally be quoted as a precedent for disinfecting it from pestilence. Purifying the haunts of men from noxious vapors may be held quite as legitimate as purifying their moral atmosphere. The fear that false doctrines may be instilled by unauthorized preachers, has its analogue in the fear that unauthorized practitioners may give deleterious medicines or advice. And the persecutions once committed to prevent the one evil, countenance the penalties used to put down the other. Contrariwise, the arguments employed by the dissenter to show that the moral sanity of the people is not a matter for State superintendence, are applicable, with a slight change of terms, to their physical sanity also.

Let no one think this analogy imaginary. The two notions are not only theoretically related; we have facts proving that they tend to embody themselves in similar institutions. There is an evident inclination on the part of the medical profession to get itself organized after the fashion of the clerisy,—moved as are the projectors of a railway, who, whilst secretly hoping for salaries, persuade themselves and others that the proposed railway will be beneficial to the public — *moved as all men are under such circumstances, by nine parts of self-interest gilt over with one part of philanthropy.* Little do the public at large know how actively professional publications are agitating for State appointed overseers of the public health.

*Whoever has watched how institutions grow — how by little and little a very innocent-looking infancy unfolds into a formidable maturity, with vested interests, political influence, and a strong instinct of self-preservation, will see that the germs here peeping forth are quite capable, under favorable circumstances, of developing into such an organization. He will see further, that favorable circumstances are not wanting — that the prevalence of unemployed professional men, with whom these proposals for sanitary inspectors and public surgeons mostly originate, is likely to continue.*

The most specious excuse for not extending to medical advice the principles of free trade, is the same as that given for not leaving education to be diffused under them; namely,

that the judgment of the consumer is not a sufficient guarantee for the goodness of the commodity. The intolerance shown by orthodox surgeons and physicians toward unordained followers of their calling, is to be understood as arising from a desire to defend the public against quackery. Ignorant people say they cannot distinguish good treatment from bad, or skilful advisers from unskilful ones: hence it is needful that the choice be made for them. *And then, following in the track of priesthoods, for whose persecutions a similar defence has always been set up, they agitate for more stringent regulations against unlicensed practitioners, and descant upon the dangers to which men are exposed by an unrestricted system.*

# GOV. LONG'S VETO.

## Commonwealth of Massachusetts.

EXECUTIVE DEPARTMENT,  
BOSTON, May 16, 1882.

TO THE HONORABLE SENATE:

I herewith return to the Senate, in which it originated, a bill "To regulate the Practice of Dentistry," with my objections thereto.

The controlling objection to this bill is, that by force of it the whole business of dentistry is made a possible monopoly, in the control of a close corporation, with restrictive by-laws, consisting of less than a hundred members, most of whom are in Boston; while the whole number of dentists in the Commonwealth is reported as some seven hundred. Under this act no person could hereafter enter into the practice of dentistry except by consent of this society, which is put under no obligation to examine candidates, but may examine whom it pleases, and none else. It may set any standard it sees fit. The diploma of any other dental or medical society is nothing unless such society is "recognized" as "respectable" by the Massachusetts Dental Society. But there is no standard of such respectability or means of compelling such recognition. How and when is an applicant in Nantucket or Berkshire to get into the profession? Suppose the society fall into the control of those who desire no more competition? Grant, as is true, that the purpose of the bill is well meant, and that the Massachusetts Dental Society would of course have no other purpose than to keep the profession clear of imposters; nevertheless a wrong principle is involved, and the precedent is bad. If there must be a certificate of qualification, let it come from a

board required to sit at stated times and in convenient places throughout the State, and to pass upon the qualifications of all who apply. Such a board, too, should spring from a broader basis than a single society, however worthy. This would obviate the special objection to the present bill. I am persuaded the bill should be more carefully drawn before it becomes a law.

It is not easy to see why there should be special legislation concerning dentists only. *Why not concerning apothecaries, physicians, oculists, aurists, surgeons, cooks, plumbers, and the other businesses which involve life and health?* It would perhaps be better worth while to consider the expediency of a general statute to the effect that any person pursuing a business or profession without sufficient skill therein shall be punished. Such a statute, in the hands of judge and jury, would never work injustice, and yet would be ample for those exceptional cases of imposition, on the strength of which various special statutes are urged from year to year.

JOHN D. LONG.







