

A new era for medical liability in Italy: back to positivism

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To the Editor,

In 2017, the Italian Chamber of Deputies approved the law n. 24 of 2017 (so-called “Gelli”) on professional liability of healthcare professionals.

One of the most significant innovations contained in the “Gelli” Law is a new provision in case of medical malpractice (‘imperizia’), where the healthcare professional will avoid liability if he or she can show that they have acted in accordance with recommended guidelines published under law. In the absence of these guidelines the professional must adhere to principles of good practice (1) Guidelines provided by the law aim to standardize medical acts. They are based on the principles of evidence-based medicine, an approach to medical practice aimed at optimizing the decision-making process (2).

In literature many physicians and jurists have commented, in a discordant manner, the choices of the Legislator. The law presents lights and shadows and it is premature to evaluate it. The formulation of guidelines and good practices is still ongoing and the jurisprudence is not well-established. It will take time before we can express ourselves on the validity of the law. As often happens, studying the past can help us to foresee the future. It may be interesting to propose an historical perspective.

The topic of discussion brings us back to the positivist culture of late Nineteenth century in Italy.

Positivism is based on the assumption that natural phenomena and their properties and relations are verified by the empirical sciences and excludes a priori any

metaphysical speculation.

The positivists believe that between science and progress there is an indisputable relationship, a prerequisite for a better society, and that the method of experimental sciences (observation, analysis, cataloging and comparing phenomena, elaboration of general laws, experimental verification) should also be applied to human and social sciences, making them quantifying and objectifying (3).

Cataloging have a pivotal role for the positivists, because it allows them to rationalize and to standardize every phenomenon, every process, everything.

Cesare Lombroso (1835-1909) and his theories applied to social medicine and criminal anthropology are certainly a universally known emblematic example.

If standardizing medical practice with guidelines, moreover for legal purposes, is very reminiscent of the Positivism of late nineteenth century, it is natural to look what were the consequences of this attitude with an historical perspective.

Under this regard it is useful to remember another Italian physician and anthropologist: Paolo Mantegazza (1831-1910), one of the most prominent Italian positivists and the first Italian supporter of Darwinism.

He was initially a supporter of Lombroso, then detached himself from the criminologist and, finally, became one of his open opponent (4).

Mantegazza does not deny Positivism, indeed, he does not recede from his cataloging obsession, the main feature of this philosophical thought, but tries to

understand the human nature in depth, up to the point of using a taxonomic approach to categorize human feelings. He eventually observes the absence of two feelings which could be catalogued equal or at least similar, thus recognizing the uniqueness of individual. On this basis, the fascinating idea of opposing and privileging the *homo aestheticus*, made up of sensations and feelings, in contrast with Bernard's *homo physiologicus* was conceived by Mantegazza. The exaltation of aesthetics in Mantegazza's positivism is his personal way of affirming the concept of superiority of the person with respect to the physical body (5).

Today the legislator considers the guidelines based on the principles of evidence-based medicine as the most objective tool for assessing medical acts and protecting the community in general, including both patients and healthcare profession. But the physician must always keep in mind that medicine is a science applied to man, and any medical act must be a consequence of a doctor-patient concordance that inevitably takes into consideration every single individual in his uniqueness.

Thus, although difficult, initially the legislator would have had to commit himself to favor the establishment of high-quality medical-patient relationships, and it is hoped that this will be the next step.

In any case, if the physician has been most careful in managing a good relationship with each individual patient and in understanding her/his situation before

performing medical acts, she/he may perhaps fear less potential judicial repercussions.

Conflict of interest: Each author declares that he or she has no commercial associations (e.g. consultancies, stock ownership, equity interest, patent/licensing arrangement etc.) that might pose a conflict of interest in connection with the submitted article

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