

Surgical Operations During the Ottoman Period. Informed Consent According to Documents of the Ottoman Archives of Crete

*OSMANLI DÖNEMİ SIRASINDA CERRAHİ OPERASYONLAR.
GİRİT OSMANLI ARŞİVLERİ DÖKÜMANLARINA GÖRE AYDINLATILMIŞ ONAM*

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Summary

The practice of the granting of a written informed consent signed by the patient or a member of his family before the judge of the religious court (Cadi) prior to the performance of an operation is revealed from the surviving Turkish documents dating back to the Ottoman period in Crete. The existence of the phenomenon of informed consent both during the Hellenistic and the Byzantine eras, as can be seen from certain documents, testifies to its historical continuity. This tradition acquired an official legal form within the context of Islamic law and the imposition of the blood tax on the surgeons in the event that any surgical operations performed by them resulted in unfortunate complications.

Key Words: Informed consent, History of medicine, Medical ethics, Ottoman history

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Özet

Ameliyatın yapılmasından ve kadının hüküm vermesinden önce hastadan ya da aile bireyinden yazılı onamın kabul edildiği, günümüze kadar gelen Girit'te, Osmanlı dönemi Türkçe dökümanlarından ortaya çıkarılmıştır. Bazı dökümanlar, hem Helen, hem de Bizans dönemleri sırasında aydınlatılmış onam olgusunun varlığının tarihsel bir devamlılığının olduğunu ispatlar. Bu gelenek, İslam Hukuku ve kötü komplikasyonlarla sonuçlanan cerrahi operasyon uygulamasında cerrahlara kan vergisi yükümlülüğünün getirilmesi bağlamında resmi hukuki dayanak sağladı.

Anahtar Kelimeler: Aydınlatılmış onam, Tıp tarihi, Tıp etiği, Osmanlı Tarihi

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Although the principle of informed consent in medical practice has been the subject of much discussion in recent years, it is now certain that it was also a matter of concern to humanity from early times. This view is documented by studies of the ancient and Byzantine writers (1) as well as of the Ottoman sources. The tradition by which the patient would give his informed consent prior to any major surgical operation that posed a potential risk for his life was one, which continued during the Ottoman era. In this later period what we today call "defensive medicine" had acquired a more general meaning. A formal deed of the religious courts would be signed in the presence of witnesses. This would make the doctor exempt from the "blood tax" (diyet) that was imposed by Islamic law in the case of any unfortunate consequences of the opera-

consequences of the operation (2,3). The practice of having the patients sign documents declaring their consent was applied without exception by all the empirical doctors who traveled the length of the Ottoman Empire, practising medicine without a formal qualification.

Material

A significant number of official documents relating to the granting of the patient's consent prior to an operation can be found among the Turkish documents of the Historical Archive of the Public Library of Heraklion in Crete (4). These documents relate to the period 1657-1765 and are essentially the codices of the religious court of Heraklion.

The parties involved were usually Christian

Greek empirical doctors who were mainly involved with the surgical treatment of hernias or the removal of stones, whilst the patients were Christians, Muslims and Jews. The majority of the Muslims who signed these agreements were soldiers. The texts have a standard form. The patient is identified by name, profession or residential address. The patient declares that because he suffers from a hernia or from any other operable illness that he is "handing himself over" for treatment to the particular therapist. If, by the will of God, he is to die, then no legal action will be brought against the therapist. In some cases a reference to "the blood tax" is made. It is worth noting that in all the cases any negative results arising from the operation are attributed to the will of God. In some cases reference is made to the payment received by the doctor. If the patient was a slave, then consent was given before the religious magistrate by his master. In the case of minors, the consent was given by the patient's guardian.

Case 1

7/2/1674

"Mustapha Bey, one of the beys of the naval fleet, entrusts Dimitrios, son of Kaloudis, for the treatment of his Genoese slave Stefanis, son of Stefanis, who suffers from a hernia and he [Mustapha Bey] declares that in the case of the death of his slave that he will have absolutely no demands against him [Dimitrios] because of the blood tax paid for his slave."

Case 2

"Before this Sacred Council appeared Giorgis Draganigos, son of Yiannas from the village of St. Paraskies in the province of Padiados, a district of the city of Handaka, who in the presence of Themelis, temporarily resident here, son of Papazot [Papazotos?], surgeon and resident of the village of Kalota in the province of Zagori in the Kaza of Ioannina, to whom this document refers, stated the following: "Because, by the will of God, a stone has formed in the bladder of my son Michalis, who is my legal son and is present afore the Council, aged 9 and who suffers from great pains and irritation when he urinates and because the surgeon

Themelis is experienced in the therapy of this illness, I have hired him for a certain period and for a certain lease [monetary sum], in my capacity as parent, to cure my son. He [Themelis] accepted this lease and I ordered that he cut the part where the stone is and clean the bladder. If due to the cutting that the surgeon shall conduct and by the will of God my son Michalis should die then I discharge now, in the capacity that I mentioned above [that of consenting father] the obligation of the surgeon mentioned herein from the depositing of the blood tax and declare that I will not have any disputes with him. The above was ratified in accordance with the divine law and this deed registered today, 11 April 1756."

Empirical Physicians

During the Ottoman era, from the 15th until the 19th century, a large number of empirical doctors was active in the Eastern Mediterranean region. The great majority of these empirical doctors originated from the area around Ioannina (in western Greece) and they were specialized in a particular field (5). A particular specialization would be passed on from generation to generation within the same family or the same village. These doctors would adopt surnames that alluded to their successful careers, such as Pantazes or Pantazides, which means he who will live (*zei*) for ever (*panta*). Until the mid-19th century the phenomenon of these traveling empirical doctors was quite socially acceptable in the Ottoman Empire (6).

The spread of this phenomenon, the increase in the number of empirical doctors who traveled and worked within the boundaries of the empire and their common descent from specific villages are well set out in an important oral account recorded by Manuel Gedeon and that referred to events which had taken place before 1830 (7). In this account a Turkish tax collector, working within the broader region of Ioannina, concludes that all the residents of the village of Tsotili without exception declared their profession as that of doctor. This was a closed society in which the members would train each other in the performance of certain medical practices. These traveling doctors would tour the Ottoman Empire for work

during the summer months whilst in the winter they would gather in the village and attend to their families.

Of course, the boundaries between the empirical doctor and the charlatan were always quite uncertain, as low educational standards led to a preponderance of fraudsters who would exploit human pain and ignorance. However, there were a significant number of doctors who practised their profession in good faith. Surgeons in particular appear to have been highly knowledgeable of certain operations, of which they were the exclusive practitioners.

Dimitrios Mavrokordatos, one of the first professors at the Athens Medical School, noted that initiation into the relevant techniques was performed "from grandfather to grandson," although no new knowledge was acquired. He also classified these practical doctors according to the type and variety of the operations that they were able to conduct: a) practical doctors who were specialized in fractures and the re-setting of the limbs; b) practical doctors specializing in the treatment of abscesses by cutting them open or with the application of poultices; c) those who specialized in the removal of stones; and d) all those who would only dress wounds (8). Barbers constituted another category of practical doctor, being involved primarily in blood-letting and the removal of teeth.

The Historical Evolution of Consent

Some more recent authors believe that informed consent is a modern phenomenon (9-11). However, from ancient Greece, there are numerous cases indicating that in a certain operation the consent of the patient was not sufficient, but the physician demanded further measures for his protection. When Alexander the Great was gravely wounded during the siege of a town of the Mallians in India (326 B.C.) and his life was at serious risk (12-15), Critobulos, a skilful physician, saved him (16). The physician was terrified at the prospect of failure and tried to avoid surgical intervention, because of the severity of the wound, because of the known strictness of the emperor, and also because of the intrigues of that time. Alexander,

however, understood his hesitation and encouraged him to proceed with the operation, assuring his immunity by calling the wound *a priori* "incurable". "For what event or moment are you waiting, and why do you not free me as soon as possible from this pain and let me at least die? Do you perhaps fear that you may be blamed because I have received an incurable wound?"

The second case also concerns Alexander the Great, who suffered an almost fatal disease during the campaign in Asia (12-16). Physicians were afraid to treat him because of the severity of the disease. Finally, an eminent military physician, Philip of Acarnania, undertook the treatment of Alexander, under strong pressure from Alexander and after the emperor had openly declared his trust in him (1,17).

During Byzantine times, we have another instance in which the physicians demanded that they be secure from repercussion of failure before they would undertake the operation (17). The patient was Emperor Justin II, who was suffering from urolithiasis, which obviously was accompanied with gout (18). The emperor was suffering pain and the physicians were not eager to operate because they were afraid they would be punished if they failed. Finally they found a way to proceed and not be held responsible if the emperor died. Besides his reassurance that there would be no serious consequences or danger for them if he died during the operation, they requested, as John of Ephesus relates (19), that the scalpel for the operation should be given them by the emperor's own hand. That would be a gesture, which declared "his own free will for the surgical intervention" according to the tradition at that time (1,19,20).

The same symbolism for the seeking not only of the patient's consent but also of his request is found in later texts such as the *Miracula Sancti Artemii* (*Miracles of St Artemios*, 7th century). Nor is this seeking of a request from a patient confined to powerful patients, as in the previous examples. The anonymous author of the *Miracles of St Artemios* praises the power of that saint to heal diseases of the testicles and hernias (21). At the same time, he actually blames Hippocrates and his successors,

the physicians, because, when they are going to operate on someone for what we in modern times understand to be hernias, they ask for the consent and indeed the request of the patient by their demand for the symbolic gesture of the latter offering "the sword" (the lancet) to the surgeon. In this way, if God heals the patient, the doctor boasts; but if not, the doctor is not considered responsible.

The eminent Byzantine physician Paul of Aegina (7th century) also expresses his own opinion that if the result of the operation seems unpredictable, the surgeon must make the patient aware of the possible danger and only then proceed with the operation, presumably thus giving the patient an opportunity to refuse it (1,22).

Discussion

The ancient tradition in which some kind of legal safeguard was sought for the doctor so that he would avoid liability from any negative complications arising from a difficult operation appears, later, to have been continued by the empirical doctors of the Ottoman period too (23). In any case, a link between the practical doctors and the Byzantine and ancient periods is also apparent in the techniques and methods that they used and that in effect constituted the application of ancient methodologies that were passed on from generation to generation.

Moreover, the application of Islamic law created an official legal structure for the safeguarding of the doctors (2,3). This was no longer done through the oral informed consent of the patient or through some symbolic act, such as the handing over of the surgical knife, but through a written agreement before the Cadi who had the full authorisation of the palace, and usually performed in front of witnesses. The imposition by Islamic law of the blood tax (diyet) for any medical errors or possible complications arising from the operation clearly created yet one more urgent reason as to why protection should be provided for the surgeons. Mavrokordatos makes special mention of the judicial licenses that practical doctors requested for difficult operations, as they would otherwise be held responsible for any unsuccessful outcome. He

notes that the poisoning of a patient as a result of erroneous treatment may have been permissible within the boundaries of the practical doctors' knowledge, but the negative outcome of an operation was socially unacceptable and for this reason a written informed consent was required (8). Particularly in relation to surgery for the removal of stones, Mavrokordatos emphasises that none of the specialists would proceed with a cystotomy or lithotripsy without the necessary judicial licences (8).

Conclusion

In conclusion, the strategy of requesting the patient's consent is not new but, on the contrary, an ancient procedure of self-protection of physicians, having its roots in ancient Greece and Byzantium. These concepts survived during Ottoman rule in the Greek territories and were adopted by the official administration, since these matters were judged and ratified by the Cadi. It is apparent that this official adoption was due to the need to protect physicians from the old Islamic law, which imposed the blood tax. Thus, the surgeons, with this official written patient's consent, were released from any penalty.

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