

Ethical Aspects of Ottoman Surgical Practice

OSMANLI DÖNEMİNDE CERRAHİ UYGULAMALARLA İLGİLİ ETİK KAVRAMLAR

Nil SARI*

* Prof.Dr., İstanbul Üniversitesi Cerrahpaşa Tıp Fakültesi Deontoloji ve Tıp Tarihi AD, İSTANBUL

Summary

Ethical rules to be observed by surgeons in the Ottoman period are found in medical manuscripts and the deed of trusts of hospitals. Besides skillfulness which was a primary rule for surgical practice, virtues such as earnestness and mercifulness were also expected. On the other hand, registers of the canonical courts' judges contain many examples of certificates of consent arranged at the presence of the judge and witnesses, between the surgeon and patient or his/her parent or guardian. These contracts describe the legal application of medical practice in the Ottoman Society.

Since patients consents were started to seek after 19. century, it is significantly important in the history of Medical Ethics that patient's consent were taken before the surgery in the presence of witnesses in the ottoman.

Key Words: Ottoman History, Medical Ethics, Surgery

T Klin J Med Ethics 2000, 8:9-14

Özet

Osmanlı döneminde cerrahi uygulamalarda ne gibi etik değerlere öncelik tanındığını Osmanlı Darüşşifalarının vakfiyelerinden ve cerrahi yazmalarda yer alan vasiyetlerden öğrenebiliyoruz. Cerrahi uygulamalarda gözetilen İslâm kurallarının neler olduğunu ise kadı sicillerinden tesbit edebiliriz. Vakfiyelere göre, cerrahı aranan nitelikler nazari bilgiden ziyade tecrübe, maharet ve ustalaktır.

Cerrahiyetü'l Hâniye ve Alâim-i Cerrahîn gibi cerrahî yazmalarındaki vasiyetlerde ise bazı ihmal ve hatalara karşı cerrahlar uyarılmaktadır.

Hastanın rızasının alınmasının Batı'da ancak 19.yüzyılda söz konusu olduğunu dikkate aldığımızda, Osmanlılarda ameliyat öncesinde ve şahitler huzurunda hasta rızasının alınmasının yaygın bir uygulama olması tıp etiğinin tarihi gelişimi bakımından çok anlamlıdır.

Anahtar Kelimeler: Osmanlı Tarihi, Tıp Etiği, Cerrahi

T Klin Tıp Etiği 2000, 8:9-14

Information and hints about the requirements and expectations of medical ethics regarding surgery during the Ottoman period is found in medical manuscripts and the deed of trusts of hospitals; while the moral principles based on Islamic Canon Law (*Shari'ah*) and the oral tradition (the *Hadith*) observed in surgical operations, that is reflection of Muslim morality to practice, are found in judges' registers.

This study is an overview of the subject, based on main sources, though not a critical approach.

Yazışma Adresi: Dr.Nil SARI
İstanbul Üniversitesi
Cerrahpaşa Tıp Fakültesi
Deontoloji ve Tıp Tarihi AD
İSTANBUL

T Klin J Med Ethics 2000, 8

Virtues Required For Surgeons

In the Ottoman period every hospital was expected to be ruled according to its deed of trust, which described the ethical issues expected to be observed by the surgeons to be appointed. As we learn from these sources, ethical rules to be observed by the surgeon were basically the same for the adult and pediatric patients (1).

For example, the most important three rules expected to be observed by the surgeons of the hospital founded by Sultan Bayezid II in Edirne (Adrianople) in 1488 were, nonmaleficence, avoiding negligence and punctuality. Skillfulness had primary importance for surgical practice. Virtues regarded as essential for the surgeon were earnestness, patience and assiduity. (2)

Ethical rules for the surgeons to be appointed to the Süleymaniye Hospital in İstanbul founded by Sultan Süleyman the Magnificent in 1556, are basically about the technical knowledge and skill to be comprised. Besides basic medical education, efficiency and skillfulness; the surgeon was responsible for the treatment of at least twenty different kinds of cases, such as treating head injuries and fractures, tumors, haernias, wounds, ulcers, pustules; and bandaging, drainage of abscesses, etc. Though pharmacists were responsible for the preparation of medical compounds, every surgeon was expected to know the methods of preparing drugs necessary for pre and post-operative medical treatment. (3)

According to the ethical rules for the surgeons to be appointed to the hospital at Üsküdar (Scutari), a suburb of Istanbul, founded by Nurbanu Sultan, wife of Sultan Selim II in 1582, the surgeon should treat his patient tenderly, mercifully; must keep up the standard of his practice; never behave rudely to the patient; should be conscious of his responsibility; and act with due care to every patient. (4)

Ethical Advices In Medical Manuscripts For Surgeons

In regularly kept surgical manuscripts we find the special ethical rules given as advices for the initiates and practitioners of surgery. For example, Şerefeddin Sabuncuoğlu, an eminent Turkish surgeon of Amasya, at Central Anatolia, gives important ethical advices to the practitioner in his famous surgical work *Cerrahiyetü'l Haniye*, written in Turkish in 1465. This textbook includes theoretical and practical points about general surgery. Sabuncuoğlu warns every surgeon to be conscious of the potential risks of extensive bleeding and major infections; and that removal of bladder stones may be dangerous for some patients. Sabuncuoğlu also warns surgeons not to operate if there is risk for the patient; and writes that, a surgeon should not operate any patient only for self interest; priority should always be given to the patient's interests. Before the operation, the patient or his family should be informed of the details and its potential risks. (5)

Another Turkish surgical book, *Alâim-i Cerrahîn* (1500), draws attention to the virtues and skills expected from a surgeon. According to this

text, a surgeon should be good humoured; honest and modest; behave respectfully to his masters; be quick and skillful; have enough basic medical knowledge; and should be informed of the methods of preparing ointments, dressings, coatings and cataplasms; must prepare drugs suited for children; and his surgical instruments must be plated gold, silver or at least tin. (6)

Hülâsa-i Divan, a 17th century manuscript, warns surgeons to be careful of right diagnosis before deciding for operation. (7)

Registers of the Canonical Courts' Judges

Islam's juridical and ethical rules to be observed in surgical operations carried out in the Ottoman State can be traced in the registers of the canonical courts' judges. Legal problems in the Ottoman cities and towns were handled by judges (*kadı*) of the canonical courts, appointed by the Palace, that is the central government or their substitutes appointed by judges. Judges registered all kinds of processes and decisions, such as judgments, sentences and contracts, etc. in their special registry known with various names, such as "*şer'iye sicili, kadı defteri*" etc. From the early years of the Ottoman State, until 1924 when the canonical law courts were closed, the judicial organization continued and hundred thousands of law scripts were recorded. Most of these records have not been preserved and those available, about 20.000 in number have not been systematically studied until recently, however important these documents are. These scripts are of great importance, because they are documents that reflect the daily social life of the people in Ottoman cities and towns. Local medical problems can also be studied from these documents; such as epidemics, hospitals (buildings and names of the personnel), the names of the known physicians and surgeons, local names of diseases, cases of forensic medicine, such as abortion, post-mortem examination, examination for virginity etc., and certificates of consent arranged between the patient and his/her physician or surgeon or oculist or midwife etc. (8)

Ethical Principles Based on Islamic Canon Law Observed in Surgical Operations

Muslim Canonical jurisprudence involves law, ethics, good manners and tradition. Reasoning is

fundamental in Islamic Law. We must bear in mind that classical Muslim jurisprudence is not the Muslim law itself, but the commentary of the period.

The surgical operation is a risk taken against the worst; that is, a balancing of beneficence against harm and choice of the act expected to be more beneficial. The right to live and the protection of human life and health in Islam is a matter of individual right covering everybody. (9) The patient gives his / her consent for an operation in accordance with his right on the integrity of his body, which is an individual right, but not an absolute one. There is a concept of a divine trust (*emanet*) to the individual for safekeeping himself. That is, as there's no right of yielding to death in Islam; the obligation to live is prior to the will for death of the individual. The beneficence for the patient is prior to his/her autonomy. (10)

Sometimes an illness does away with the individual's capability of consent; or a patient may be underaged or incompetent. Therefore, for children and those who are not competent, the qadi chose whomever he found appropriate as the guardian. The concept of guardianship originated according to the patriarchal type of family, that is father, grandfather, uncle or sons were to be guardian; though we have rare examples in the Ottoman period where the mother was the guardian. (11)

Inflicting physical or moral harm (*müessir fiil*, that is, assault and battery) intentionally or indeliberately, such as injury and murder are crimes committed against individuals. Islamic law prescribes immunity for life and property. (12) Cause of death or injury or invalidating of the patient necessitates compensation / blood money, which is required by the victim himself / herself or if underaged, by his / her parent or guardian; and if dead, by inheritors. Blood money punishment for the whole body (*diyet*) or for a wound or partial loss of an organ or limb (*erş*), is to ensure the balance of harm against punishment. Blood money is an alternative of retaliation (*kisas*). That is, in case of harm, while preventing retaliation, it also prevents the sufferer from impoverishment, hence begging because of loss of health or invalidation; or compensates for the loss of inheritors. (13)

Consent Against Compensation Before Medical Intervention

In Islam, all legal and commercial mutual relations have to be based on consent; but, guaranteed cure and recovery in advance is not regarded as acceptable in Islam. Also, the physician can not be obliged to guarantee the result of the treatment, for the result can not be known before hand. Healing is a matter of destiny and it can not be regarded as the power of anybody. As nothing is absolutely certain, there is a probability of misfortune. Here, destiny is connected with the end, just as the concept of death, which provides for the resistance to bear the results of a misfortune. (14)

The requirement of a written consent was inevitable then, because surgical technology was not developed and the death or invalidation risk was high. (15) There were a few kinds of operations often practiced, that is hernia and lithotomy, which were less risky.

A special consent was used to be taken from the patient; or the parent or guardian of the child; or from the judge before treatment or a surgical operation; and a contract was signed to certify this, in order to withhold the patient, his/her relatives or the child's parent or guardian from starting a suit for compensation against the surgeon in case of death or injury. Consent of a person for a surgical operation in advance means the renunciation of the future right of suing, in case of a harm or dissatisfaction. This certificate (*hüccet*) of consent was arranged at the presence of the judge and witnesses, between the surgeon and patient or his/her parent or guardian. Written and oral consent was not regarded as satisfactory and to guarantee against conflicts about the probable unwelcomed results, the agreement was arranged and signed by witnesses at the presence of the judge. To be a legally valid consent though, its content should be clearly known by the patient; but, no sufficient written information about the intervention is given, except in a few examples, and sometimes it is only implicitly expressed in these documents. (16)

In this contract, usually the surgeon's skill was also noted and it was marked that the surgeon was going to operate the patient skillfull and was to do his best. In some of these contracts the surgeon's fee and the amounts to be paid before and after

the operation, was also noted. In the Ottoman period, there was a wage relation between the physician and the patient who was a client. That is, medical treatment was considered as a paid service. (17)

Then, when was a surgeon regarded responsible? Surgeons were not considered responsible for the unwelcomed results of their treatment, provided that they observed certain requirements: if a written consent was taken; when there was not any unacceptable surgical or medical failure; when the surgical technique practiced was found to be in accordance with the standards of its time; when no ill will was found to be in the practice; and when found to be qualified, skilled and efficient enough, a surgeon was not regarded responsible. (18) When the treatment caused any harm, in order to understand whether the practice was in accordance with the day's knowledge and technique, an expert (*ehl-i hibre*), that was another surgeon / physician was called; and if found responsible, all unjustly given harm was to be compensated. This meant that the consent of the patient removed the physician's responsibility only for normal situations. If the surgeon treated his patient honestly with assiduity and used his surgical skill properly, no compensation was to be claimed in case of death or injury, as a result of this consent; but, if the surgeon was found to be negligent, incautious faulty or unskillful, he had to compensate the harm given to the patient; that is, if the harm or death was the result of malpractice, the consent was not regarded to be valid any more. Non-professionals were regarded as responsible for the harm that they may give to the patient. In Islam, ignoring the harm is not legally right, it exists only from the point of view of destiny. (19)

Examples of Ottoman Consent Certificates Related With Pediatric Surgery

There are several examples of the above said contracts, dating back to the 15 th century Ottoman reign. (20) I would like to give two cases of negotiation between two parties in 1765; one between a surgeon and a child's parents; the other between a midwife and a new born baby's parents:

Case I

"Ömer and his wife from Şehreküstü, a district in Gaziantep, southeast of Türkiye, accused the son

of Mustafa, Molla Mehmet, the surgeon, who lived in the same neighborhood and claimed:

'A swelling had developed on our son Mehmed's back and we took him to the accused surgeon for treatment. The accused incised the swelling and as a result our son died in four days.'

So the plaintiff asked the court to start the necessary process.

The surgeon defended himself saying:

'The illness known as *Düzüncü* in our city, was on the back of the child. This illness is treated by incising (*delfing*) and then draining the liquid in it, called *ma-i cedid*. Later, the wound is treated (medically). The method of treatment has been practiced successfully for a long time. I had the plaintiff's consent for incising and treating the swelling.'; and he also submitted an opinion on legal matter (*fatwa*) proving the truth of what he had said in his defense.

The plaintiff said that he did not have their consent. So, the accused was asked to submit his defense.

The witnesses who were heard said that the operation was performed on the plaintiff's consent. They also added that, Molla Mehmed was an efficient surgeon.

The plaintiff's claims were refused. (21)

Case 2

"Mehmed Emin, the son of Mustafa and Hanife, the daughter of Ahmet, who lived at Küçükpazar in İstanbul, who were known to be the father and mother of the infant called Mustafa, mentioned below, came to the Islamic juridical court. Saliha, the daughter of Ali, the acquired, a known midwife of Kasımpaşa, also being present, the plaintiff stated:

'Our son Mustafa was born last year after seven months pregnancy, on the 9th of December. Saliha also being present, the infant's navel cord was cut off as usual and he was named Mustafa. Six days later, Saliha came and cut the navel cord off the infant again with a scissors. After having cut and injured, it started to bleed and he died in 24 hours. As we wanted Saliha, the mentioned midwife to be punished, we applied to court and sued her.

She (the midwife) objected and an argument started between us. Our Moslem neighbors tried to negotiate us; and an agreement was made for the accused to pay us 33 piasters (*guruş*); consequently we were reconciled. Having agreed to be paid the said 33 piasters in certain periods, we admitted to end all suits and claims related with the compensation for the death of Mustafa. '

As she also accepted this negotiation and the agreement being confirmed by the court, it was literally recorded as required. (29 January 1765)

Witnesses: Molla Mustafa, Hüseyin Odabaşı bin Hasan, Turmuş bin İbrahim, Ali bin Hasan, Debbâğ el-hâc Halîl. (22)

In short, considering the fact that the idea of the need for the consent of the patient in the West began in the 19th century and the notion of patient rights is a newly developing concept (23), the common practice of requiring a written consent of the patient in the Ottoman State is quite significant, as this need had been felt earlier than the Western World, where medicine was started to progress earlier than the Ottoman World.

REFERENCES

- Sarı N. "Osmanlı Darüşşifalarına Tayin Edilecek Görevlilerde Aranacak Nitelikler". Yeni Tıp Tarihi Araştırmaları, No. 1, İstanbul, 1995, pp. 11-54. See. pp. 19, 25.
- İbid, pp. 32-33; Gökbilgin MT. XV-XVI. Asırlarda Edirne ve Paşa Livası; Vakıflar-Mülkler-Mukataalar. İstanbul, 1952, İ. Ü. Edebiyat Fakültesi Yayını, No. 508, pp. 150-72.
- Sarı N. op. cit., note 1 above, p. 33; Kürkçüoğlu KE. Süleymaniye Vakfiyesi. Ankara 1962, Vakıflar Umum Müdürlüğü Neşriyatı, pp. 40-1.
- Sarı N.: op. cit. note 1 above, p. 33; Vakıflar Genel Müdürlüğü, Y.Y.D: 1766 / 136-27ss, sıra no.27, Kasa no.121.
- Akdeniz (Sarı) N. Osmanlılarda Hekim ve Deontolojisi. İstanbul, 1977, p. 40.
Ş. Sabuncuoğlu: Cerrâhiyetü'l Haniyye. Millet Ali Emiri National Library, No. 79, f. 47b-48a.
- Akdeniz (Sarı) N. İbid, pp. 40-1.
İbrahim b. Abdullah'ül Cerrah: Alâim-i Cerrahîn. Cerrahpaşa Medical School Medical History Department Library, No. 125, f. 2b-3a.
- Akdeniz (Sarı) N. Osmanlılarda Hekim ve Deontolojisi. op. cit. note 5 above;
Hülâsa-ı Divân tercümesi. Cerrahpaşa Medical School Medical History Department Library, No. 164, p. 2-3
- Uzunçarşılı İH. "Şer'i Mahkeme Sicilleri ". Ülkü, vol. 5, No. 29, 1935, pp. 365-8.
Uluçay MÇ. " Manisa Şer'iye Sicillerine Dair Bir Araştırma ". Türkiyat Mecmuası, vol. 10, 1951-53, pp. 285-98.
Bayat AH. " Şeriye Sicilleri ve Tıp Tarihimiz. " Türk Dünyası Araştırmaları, Ağustos 1992, No. 79, pp. 9-21.
- Akgündüz A. Belgeler Gerçekleri Konuşuyor (I). İzmir, 1989, Nil Yayınları, pp. 1-5, 10-3.
Udeh A. (trans. Özcan R. - Şafak A.). " Et-Tesriü'l-Cinâiyü'l- İslâmî Mukarinen Bi'l Kanuni'l- Vaz'i. " Mukâyeseli İslâm Hukuku ve Beşeri Hukuk. (Notlar İlâveli ve Türk Ceza Kanunu İle Karşılaştırmalı). Ankara, 1990, Rehber Yayını 11, Temel Eserler series 1, vol. 2, p. 135.
- Udeh A. (trans. Özcan R. - Şafak A.). op. cit. note 9 above, vol. 2, pp. 62, 65-6, 83; vol. 3, pp. 139-40, 224-5.
Bilmen ÖN. Hukukî İslâmiyye ve İstilahatı Fıkhiyye Kamusu. İstanbul, Bilmen Yayınevi, vol. 3, p. 100.
Quran: Âli İmrân 3 / 185; El-Mülk 67 / 1-2; El-Ahzâb 33 / 36.
- Udeh A. (Özcan R. - Şafak A.): op. cit. note 9 above, vol. 2, p. 24.
Bilmen N. op. cit. note 10 above. vol.3, p. 114; vol. 7, pp. 271, 274, 277, 284, 286, 288.
Tan M (editor: Onur B.). Toplumsal Tarihte Çocuk Sempozyumu (23-24 Nisan 1993). İstanbul 1994, Tarih Vakfı Yayını, p. 14.
Ankara register: No. 40, p. 100 (date. 17 Şevval 1065 / 22. 06. 1655). Here, the mother, Zeyneb binti Cafer is the guardian.
- Udeh A. (trans. Özcan R. - Şafak A.). op. cit note 9 above, vol. 1, pp. 76-7,
Bilmen ÖN. op. cit. note 10 above, vol. 1, p.113, 279.
- A. Udeh (trans. R. Özcan - A. Şafak) : op. cit., note 9 above, vol. 1, pp.121-122 ; vol. 2, pp. 242-5.
Bilmen ÖN. op. cit. note 10 above, vol. 1, pp. 286-7.
Şafak A. Mezheblerarası Mukâyeseli İslâm Ceza Hukuku. Atatürk Üniversitesi Yayınları, No. 503, Erzurum 1977, p. 130.
Quran: En'am 6 / 164; Fatır 35 / 18; Necm 53 / 39; Fussilet 41 / 46; Nisa 4 / 123.
Bakara 2 / 178-179; Mâide 5/32.
- Quran: Bakara 2 / 188; Nisa 4 / 29.
- Udeh A. (trans. Özcan R. - Şafak A.). op. cit. note 9 above. vol. 2, p. 124.
- Udeh A. (trans. Özcan R. - Şafak A.) : op. cit. note 9 above, vol. 2, pp. 19, 23-4, 61-8, 71-79, 83-4, 125, 135, 242-5; vol 3, pp. 101-2, 193-8; vol. 3, pp. 269, 273.
For hüccet (promissory note) see: Kütükoğlu MS. Osmanlı Belgelerinin Dili. İstanbul, 1994, pp. 350-9.
Bilmen ÖN. op. cit. note 10 above, vol. 1, p. 281; for jurisdiction about witnesses see: vol. 8, pp. 123-36; 167-74.
- Akgündüz A. Şer'iyye Sicilleri. vol. 1, Türk Dünyası Araştırmaları, İstanbul, 1988, p. 282.

- 18.Udeh A. (trans. Özcan R. - Şafak A.) : op. cit. note 9 above, vol. 2, pp. 84-5; vol. 3, pp. 101-2, 107, 109, 111; vol. 2, pp. 62, 84, 122-4.
 Günenç H. Günümüz Meselelerinde Fetvalar. İstanbul 1983, İlim Yayınları, vol. 1, p. 138.
 Bilmen ÖN. op. cit. note 10 above, vol. 3, pp. 113-4.
 Bardakoğlu A. " İslam Hukukunda Doktor ve Diğer Sağlık Personelinin Hukuki Mesuliyeti. " Kayseri Üniversitesi Gevher Nesibe Bilim Haftası ve Tıp Günleri. 11-13 Mart 1982, Kayseri, pp. 527-30.
- 19.H. Günenç: op. cit., note 18 above, p. 138.
 Bilmen ÖN. op. cit. note 10 above. vol. 3, p. 113; vol. 7, p. 272.
 Udeh A. (trans. Özcan R. - Şafak A.) : op. cit. note 9 above. vol. 2, p. 123.
- 20.References for agreements signed before pediatric surgery (examples of consent for the extraction of the bladder stone and the operation of inguinal haernia):
 Aksu F. " İspartalı Hekim ve Cerrahlar. " Ün, vol. 4, No. 37, 1937, p. 527.
 Baki EA. " Afyonda Eski Zamanlarda Yaşayış 18: Afyon'un Büyük Hekimleri ". Taşpınar, No. 86, 1941, pp. 26-7.

- Baki EA. " Afyonkarahisar'da XVII-XVIII. Asırlarda Meçhul Halk Tarihinden. " Yeni Mat, Afyon, 1951, pp. 42-3.
 Gökpınar EA. " Şeriye Sicillerine Göre: Eski Zamanlarda Afyon'da Yaşayış. " Taşpınar, vol. 4, No. 42, 1936, p. 214.
 Özdemir R. XIX. Yüzyılın İlk Yarısında Ankara. Kültür ve Turizm Bakanlığı Yayını, No. 694, Ankara, 1986, p. 294.
- Examples of unpublished references:
 Konya register: No. 42, p. 198 (date: 8. Muharrem. 1119 / 11. 04. 1707); Konya register: No. 26, p. 266 (date: 17. Ramazan. 1087 / 23. 11. 1676); Ankara register: No. 40, p. 100 (date: 17. Şevval. 1065 / 22. 06. 1655)
- 21.Güzel CC, Yetkin H. Gaziantep Şer'i Mahkeme Sicillerinden Örnekler (Cilt: 81-141/ Milâdî 1729 -1825). Gaziantep, 1970, Gaziantep Kültür Derneği Yayını , No. 55, p. 80; (Gaziantep register, vol. 122, p. 72, 15 Şaban 1178 / 8. 02. 1765).
- 22..... " Osmanlı Toplum Yaşayışınla İlgili Belgeler - Bilgiler / Suçlar ve Cezalar- III ". Tarih ve Toplum. 1984, No. 9, p. 9 (153); İstanbul Kadı Sicili, vol 25, p. 237, (İstanbul register vol. 25, p. 237; date: 17 Şaban 1179 / 29 January 1765)
- 23.Faden RR, Beauchamp TL. A History and Theory of Informed Consent. Oxford, 1986, Oxford University Press, Inc.