

Real medical science may be said to have begun with rational empiricism and experiment. The story may not be accurate that the first system of medicine was based upon a comparison of the remedies which patients had found beneficial, the treatment and the result being recorded in the Temple of Aesculapius. But whether that be so or not, there can be little doubt that it was by some process of observation and comparison of the results of remedies that system, however defective, was introduced into medicine. This must needs be a science of observation and experiment—and most of the absurdities of mediaeval (you will observe how careful I am to particularize and emphasize “mediaeval”) physicians arise from the fact that they tried to make everything fit into a preconceived theory—itsself the result of immature and unfounded generalization. Modern medicine has generalized; but that process has been held in check, and theory made to give way to fact, not fact to theory.

In law, empiricism is out of the question. The customs of the clan, tribe or nation are established facts—the early kings and judges indeed received illumination from the gods, but the “themistes” so received were delivered by them to the people; and these again were established facts. And where the customs of the people were not supposed to be known to all, but were treasured up by a college of priests or the like, the customs were none the less known facts. The law then was a matter of authority, not of experiment—that litigant had success who managed to keep closest to what authorities laid down for his guidance, while that patient was not always the most fortunate who was treated most *secundum artem*. (Of course again I am speaking of very remote times and with no reference to the present.)

It is most interesting to compare the views of medical men now with those of their remote professional ancestors. At first, and for ages, all disease was supposed to be caused by an angry god, either by immediate stroke or through the agency of a daemon or sprite—disease was the act of a being indefinitely great as compared with man. Now, at this long last, it is the indefinitely minute, the bacillus, the coccus, the spirillum. Formerly the god had to be propitiated by sacrifice; now the potent mischief-maker must feed itself to death, or be met by some entity still more potent.

It is not exactly so in law; but not wholly dissimilar. In olden days it was all custom; and the customs were believed not to be of human, but of divine origin. The founding god or the eponymous hero of the clan had laid down the rules his descendants were to observe—violation of any of these rules was sin and