Code of Medical Ethics of 1949 and the *Ten Principles of Medical Ethics* of 1957 are, like it or not, public documents. And, standing as they do in lieu of unambiguous statements of commitment to serving the patient's needs and respecting his or her rights, they do the medical profession continuing dis-service.

What have passed for adequate statements of the physician's ethical commitment in the fifth century B.C., in 16th-century England and in 19th-century America simply will not suffice as we approach the closing decades of the 20th century.

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ANNUAL DISCOURSE — THE CRISIS IN ETHICS, ANNO DOMINI 1979

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BY selecting me as your 170th speaker, the Councilors of the Massachusetts Medical Society have accorded me a great honor, for which I am deeply appreciative. This custom of an Annual Discourse or Oration was inaugurated 175 years ago and has been a feature of each of our annual meetings since 1832. Our most distinguished medical leaders have presented their views in this forum, and their discourses have covered the whole of medicine. For example, the inaugural address was given in 1804 by Isaac Rand, president of the society, who spoke on "Phthisis Pulmonalis and the Use of the Warm Bath." In 1820 John Collins Warren discussed "A Comparative View of the Sensorial and Nervous Systems in Man and Animals," in 1844 John Homans considered "The Character and Qualifications of the Good Physician," and in 1860 Oliver Wendell Holmes spoke on "Currents and Counter-Currents in Medical Science."

In view of the eminence of those who preceded me, I am sure that you can sympathize with the trepidation that I experienced when I was invited to join these medical giants. I do, however, have a love for our profession, a respect for its nature and a desire to uphold its ideals. These are some of the things I wish to discuss with you today.

I have long been interested in the exact meaning of words, as you will soon realize, but my interest in the present crisis in ethics is of relatively recent origin and primarily results from two stimuli — one from inside, and the other from outside the medical profession. The first came when a proposed revision of the American Medical Association's Principles of Medical Ethics was presented to its House of Delegates in November, 1977, by the association's Judicial Council. In June, 1978, the house considered the proposed revisions. Discussion was intense and prolonged. The council tried to explain that the current principles were not sacrosanct, that they had been revised five times since 1908 and that the intent of the council was to modernize the language, to take cognizance of the changes in medical practice that had occurred since the last revision in 1957 and to clarify the meaning of the principles to eliminate any apparent conflict between them and current laws.

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The opponents of this action took the position that the association was surrendering to the unreasonable demands of a hostile government, that, in the words of one delegate, "Everything that I have studied about ethics from the time Genesis was written until the Greek population dominated the world is that it [sic] is above the law and adherence to our own ethics is quite a bit different than conformity to law."

So deeply emotional was this debate that a compromise had to be reached: an ad hoc committee was authorized to study the problem and report back to the house. This study is still in progress, and I am privileged to be a member of that committee.

The second stimulus for my interest in the present crisis in ethics came from the Federal Trade Commission, which, in 1975, had accused the AMA, the Connecticut State Medical Society and the New Haven County Medical Association (known collectively as "the respondents") of attempting to stifle competition for medical services through the AMA's Principles of Medical Ethics and particularly through the statement that physicians should not solicit patients.

A crucial element in this attack can be found in the opinions of Michael B. Pertschuk, a lawyer and chairman of the FTC, who expressed concern about the rising costs of medical care. In June, 1977, Pertschuk stated that "one possible way to control the seemingly uncontrollable health sector could be to treat it as a business and make it respond to the same market place influences as other American businesses and industries." In any event, the issue came to trial in September, 1977, before an employee of the FTC, Ernest G. Barnes, an administrative law judge. The trial, which, in regard to due process and the even handed application of justice has been compared to the trials reserved for dissidents in the Soviet Union, was concluded in May, 1978, after over $500,000 in legal fees had been spent by the AMA alone. On November 13, 1978, a decision and order was rendered by Barnes; predictably, he found for his employer, the FTC, and against the respondents.

By his decision the respondents were barred from making any reference to advertising and the solicitation of patients; even more distressing was the following:

> *Provided further* that after this order has become final for two years nothing herein shall prohibit respondents from formulating, adopting and disseminating....ethical guidelines in respect to advertising and solicitation activities, if respondents first obtain permission from and approval of the guidelines by the Federal Trade Commission.

Barnes further clarified this outrageous ruling by stating:

> The order will permit respondent [the AMA] to issue ethical guidelines affecting advertising and solicitation relations by physicians in the future with the permission of and approval by the Federal Trade Commission, which has the organizational flexibility and the know-how to work with respondent and assure that such guidelines as are approved are in the public interest.

Is it any wonder that the AMA has vowed to fight this decision through to the Supreme Court if necessary? The rulings of Judge Barnes run to 312 pages, but one may summarize his opinions as follows. The practice of medicine can be regarded as a trade, and its practitioners as engaged in commerce. The public must have free access at competitive prices to commercial products (in this case the delivery of medical care). This goal is best attained through competition in the marketplace overseen by the FTC, which has jurisdiction over the manner in which commerce is conducted. In addition, laws, rules and regulations can adequately protect the public from unfair competition and the marketing of shoddy products. Finally, there is really no need for a statement of principles of medical ethics to protect the public; indeed, these so-called principles have been designed and interpreted to insulate physicians from legitimate competition for medical services rather than to protect the public.

Thus it came to pass that a dictum of medical materialism, stated by Pertschuk and his employee, Barnes, confronted the concepts of medical humanitarianism, which date back at least to Hippocrates and were so recently supported by the House of Delegates of the AMA.

For the past several months I have been engaged in an examination of this controversy. It has been necessary for me to consider the distinction (to determine whether one truly exists) between a trade and a profession; I have delved into the question of the origin, nature and purpose of legal codes, moral codes and ethical codes. I have tried not only to examine objectively the allegations of the FTC but to analyze in like fashion the current attitudes and behavior of physicians. Finally, I have considered the current state of ethics in our society as a whole. As a result of these excursions I have come to believe that we need to understand, confront and resist certain malign influences that threaten to eliminate ideals that have made the care of the sick not a materialistic exercise but a humanitarian profession. My purpose is to place before you some of the reasons for this belief.

First of all, the *American Heritage Dictionary* defines a profession as "the body of qualified persons of one specific occupation or field." Jacques Barzun in an article in *Harper's* (October, 1978) enlarged on this definition:

> According to Dr. Abraham Flexner, the famous critic and reformer of medical education fifty years ago, to be medically trained implies "the possession of certain portions of many sciences arranged and organized with a distinct practical purpose in view. That is what makes it a profession." The key words here [writes Barzun] are: "a distinct practical purpose in view," for which "special training is required." Since the laity, by definition, has no such purposes and lacks special training, a profession is necessarily a monopoly. In modern societies this monopoly is made legal by a license to practice; but the professions have always managed to form a guild, a trade union, claiming the exclusive right to practice the art. From the tribal medicine man to

> the priest-physicians of the days of Hippocrates and to those now certified by the National Boards, no secret has been made of this exclusion, this separation of the profession from the rest of the people. Rather, it is a source of pride to the professionals; and they justify the monopoly by calling it essential to the safety of the public. But between monopoly and conspiracy the line of demarcation is hard to fix and easy to step over.

This analysis of our profession by a distinguished scholar delineates with exquisite precision the advantages and the dangers to society of defining a profession and giving special treatment to professionals within it. It also contains the root of the argument of the FTC.

Nevertheless, by definition and common societal acceptance, medicine is a profession and cannot be treated as a trade; in this respect the FTC is dead wrong.

Let us now move to a consideration of morals, ethics and laws — an area in which I found that some of my basic beliefs were open to question. Consulting my dictionary once more, I found that the word "moral" was defined as "of or concerned with the judgment of the goodness or badness of human action and character; pertaining to the discernment of good and evil." And under "morals" I found "rules or habits of conduct, especially sexual conduct, with reference to standards of right and wrong." So far, so good; but then the dictionary made the following statement "moral pertains to personal behavior (especially sexual) measured by prevailing standards of rectitude." It was the phrase "prevailing standards of rectitude" that gave me trouble. And yet, the more I considered that problem from the standpoint of historical and current moral values and principles of conduct, the more inescapable this conclusion became. Morals and the principles derived therefrom are not immutable.

From this I have come to believe that moral codes are consensual guides to conduct promulgated from time to time by a community (be it a tribe or a nation) whose members believe that adherence to these guides offers the best opportunity for living together in peace and harmony.

In the United States our concepts of morality are derived from religious teachings, primarily those of Judaism and Christianity, and yet through the years those concepts have been altered substantially. Indeed, it would seem that only two precepts have withstood the buffeting of time: the biblical admonition that "one should love thy neighbor as thyself," and the Golden Rule, which is expressed so beautifully in the gospel according to Matthew: "Therefore all things whatsoever ye would that men should do unto you, do ye even so to them." Recent changes in moral precepts are probably due to new answers to such questions as: Who is my neighbor? and What indeed do I wish society to do for or to me? One thing is certain: Our moral values have changed and nowhere is this more clearly exemplified than in current attitudes toward abortion.

Let us turn now to a brief comparison of temporal law with moral law. Moral law is consensual in nature. Its primary purpose is to guide the conduct of man before an act is undertaken. Moral law embodies the concept of a reward for rightful behavior. Temporal law, which my dictionary defines as a "body of rules governing the affairs of man within a community or among states," could be further defined as rules of conduct established by the state to govern the affairs of its citizens, being derived from moral principles designed for the benefit of those citizens. Temporal laws are by their very nature rigid. Implicit in them is the principle of punishment for wrongful behavior. The fact that they are developed by a government causes them to lack the spiritual quality of the sources from which they are derived. Temporal laws do share a common feature with moral precepts, however; although lagging behind, they inevitably reflect the attitudes of society about issues of morality. It is this feature of temporal law that has given rise to the adage that the Supreme Court follows the election returns.

But just as moral codes give rise to legal codes, they also give rise to a particular set of guides to behavior, which I have chosen to call ethical codes. In most considerations of this subject the words "ethics" and "morals" are often used interchangeably. For the purposes of this discussion, however, I have chosen to define ethical principles as guides to correct conduct derived from moral precepts but generally more restrictive and usually applied to a group of individuals within a community, whose obligations to society are, because of the nature of their activities, different from those of the community as a whole. This definition is consonant with a further explanation in my dictionary, that ethical "approaches behavior from a philosophical standpoint; it stresses more objectively defined, but essentially idealistic standards of right and wrong...."

If these concepts of morals, laws and ethics are correct, what order of priority should we give them? In a social group moral and ethical behavior must conform with the law, not defy it. On the other hand, society should place no restriction on any group that seeks a standard of behavior more correct and more stringent than that required by law. In this respect one can think of moral and ethical standards as being higher than the law.

These same principles generally apply to individual behavior, although, when an individual believes that to conform with the law violates his conscience, society is usually prepared to make an exception. During periods of warfare, for example, persons whose consciences forbid them to kill under any circumstances have been given special consideration in this country.

Let us now consider the need for a code of ethical behavior for physicians. There is no question that physicians are members of a profession as defined by Flexner and Barzun. Furthermore, the majority of Americans believe that physicians in their professional activities have an obligation to society that is quite different from that of other groups. For example, if a physician took advantage of the unique relation between patient and doctor for purposes of sexual gratification, such behavior would be condemned as unethical by the profession and probably as immoral by society. Yet it seems that in general it is presently neither illegal nor immoral for "consenting adults" to engage in sexual activity regardless of marital status or even gender.

It is clear that the medical profession and the community that it serves require a code of ethical behavior with standards that conform with the law but are morally superior to legal codes and rules that govern the rest of society. In this respect, medical ethics can be regarded as "higher than the law," although not "above the law."

If moral precepts and legal codes can change as the views of society change, have the ethical principles of American physicians been carved in stone? I see no way that such a thesis can be defended. The Code of Ethics of the AMA was adopted in 1847; subsequently the association changed the title to "Principles of Medical Ethics," and at least seven revisions have been made over the years. Moreover, the ethical issues that face society and its medical practitioners have increased dramatically since the last revision of the principles in 1957.

That medicine must and does respond to societal stimuli was noted by Oliver Wendell Holmes, whose Annual Discourse in 1860 contained the following observation:

> There are of course, in every calling, those who go about the work of the day before them, doing it according to the rules of their craft, and asking no questions of the past or of the future, or of the aim and end to which their special labor is contributing. These often consider and call themselves *practical men*. They pull the oars of society and have no leisure to watch the currents running this or that way; let theorists and philosophers attend to them. In the meantime, however, these currents are carrying the practical men too, and all their work may be thrown away and worse than thrown away, if they do not take knowledge of them and get out of the wrong ones and into the right ones as soon as they may...the truth is that medicine, professedly founded on observation, is as sensitive to outside influences, political, religious, philosophical, imaginative, as is the barometer to the changes of atmospheric density. Theoretically it ought to go on its own straight-forward inductive path, without regard to changes of government or to fluctuations of public opinion. But look a moment while I clash a few facts together, and see if some sparks do not reveal by their light a closer relation between the Medical Sciences and the conditions of Society and the general thought of the time, than would at first be suspected.

It is of vital importance that our profession have a body of ethical principles that emphasizes moral integrity and compassionate service to the sick and is competent and confidential. These principles must, however, be revised from time to time to reflect changes in culture and general moral outlook that benefit society. These considerations often create basic conflicts that give rise to great controversy, are most difficult to resolve and need our collective wisdom for solution.

Although a revision of the Principles of Medical Ethics may be required, we physicians need even more to take a very objective look at ourselves. The reputation of any profession rests on the character of its practitioners, and in my view we have lost certain valuable assets in recent years. There are aspects of thought and behavior that are essential if we are to be considered "honorable physicians" worthy of the trust of those whom we serve; some of them are the following:

First of all, we need to reaffirm our pride in ourselves. By pride I mean that respect for self that gives one the inner strength to promote the welfare of others — a principle clearly stated over 2000 years ago by Hillel, one of the great Jewish sages, who wrote: "If I am not for myself who shall be for me? But, if I am for myself alone, what am I?"

We also need to acknowledge that we have been given an elevated status in the community. We must recognize that we are a privileged group, but we must also recognize and accept the obligations that our privileges cause to be imposed on us.

It is because of these obligations that I urge a reconsideration of the ancient principle of noblesse oblige. This ethic, which originated in feudal times, has been all but discarded by democracies because of the common assumption that the word "noblesse" referred only to those who had inherited an elevated status. But my trusted dictionary still carries the definition of noblesse oblige as "benevolent and honorable behavior considered to be the responsibility of persons of high birth or rank," and it defines benevolent as "kindness, charity and a desire to promote the welfare of others."

If it is true, as I believe it is, that members of the medical profession have been given "high rank" and occupy a special place in society, a special definition and application of the noblesse oblige ethic seems justified: honorable behavior encompassing kindness, charity and a desire to promote the welfare of others and considered to be the responsibility of physicians and members of other professions who have been given a special status by society.

At present, the preamble to the Principles of Medical Ethics contains the following: "They [the principles] are not laws but standards by which a physician may determine the propriety of his conduct in his relationship with patients, with colleagues, with members of allied professions and with the public." Would it not be better if the preamble said something

like this: "These principles are not laws but standards designed to delineate honorable behavior on the part of physicians, encompassing kindness, charity and a desire to promote the welfare of others, particularly their patients."

Jacques Barzun, whom I quoted earlier, had these further remarks:

> But what the professions need in their present predicament is, first, the will to police themselves with no fraternal hand, with no thought of public relations.... [but] Policing, being negative, is not enough. It will not effect moral regeneration, which can come about only when members of a group feel once more confident that ethical behavior *is* desirable, widely practiced, approved, and admired. After a marked decline, it can only be a slow growth and only one force can start it on its way, the force of moral and intellectual leadership....When the problem is a failure of competence and morality, nothing will solve it but the work of an individual mind and conscience, aided of course by the many scattered men of talent and good will who are only waiting for a lead.

This brings me to my final point and the reason that I titled this discourse "The Crisis in Ethics, Anno Domini 1979." The reputation of our profession rests on the character of those who practice it, and I am not satisfied that the ethical precepts that are learned before a student enters medical school are currently adequate and proper. As informed individuals we are bound to recognize the changes in societal morality that have taken place in the latter half of the 20th century. We are obliged to conform with the laws that have stemmed from these changes in moral outlook, but we are not required to approve of the changes or the laws. If you subscribe, as I do, to Barzun's belief that there is a need for moral regeneration and that only one force "can start it on its way, the force of moral and intellectual leadership," then I suggest that we apply the principle of noblesse oblige not just to our profession but to our nation as a whole. It is incumbent on us as honorable physicians, as a group that has been granted a privileged status in society, to behave and act in a fashion that will assure those who come after us of an opportunity to live with rectitude in an environment of benevolence — that is, of kindness and charity — and in a manner that will promote the welfare of others.

In this discourse I have attempted to place before you some of the problems in ethics that concern not only our profession but society as a whole. I have tried to show how wrong the FTC has been in its attack on the ethics of the medical profession. I have also touched on our vulnerability as members of a privileged group. I have endeavored, as Holmes did 119 years ago, to "clash a few facts together and see if some sparks do not reveal by their light a closer relation between the Medical Sciences and the conditions of Society and the general thought of the time, than would at first be suspected."

I have been positive in my approach to a solution of our problems, but if we fail in moral leadership we can expect a world like that characterized by Jane McClean:

> Let thine intellect be thy guide
> Thus doth conscience make a coward of us all
> Nationalize
> Rationalize
> For 'tis gravity when the sparrows fall
> And no one Being watches them at all.
>
> Know that stone walls do indeed a prison make
> And iron bars are cages o'er the earth
> Pride ourselves
> Hide ourselves
> From love and piety and mirth
> In innocence...so little are they worth.
>
> Thus, "feeling" is for fingers
> Emotion stems from endocrine alone;
> The heart is but a pump (it gives you oxygen)
> Doctors need no Doctrines, no nor "Images of Stone".
> Yea, let thine intellect be thy guide
> And Satan make a trophy of thy hide.

I am confident that we shall not fail, that we shall continue to prove our worth. I believe that we can demonstrate that the benefits derived from according a privileged status to our profession far outweigh the risks. But the proof to society will rest on our individual resolve to demonstrate by thought, word and deed that we are a vital part of that "force of moral and intellectual leadership" so badly needed in the world today.