

Title: The Zeroth Law of Medicine

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After promulgating his famous three laws of robotics- first among them being the rule that a robot may do no harm to a human, or, through inaction, allow a human to come to harm- Asimov added a fourth, more primordial law. This 'Zeroth law'- that a robot may not harm *humanity* or, through inaction, allow it to come to harm- was intended to serve as the guiding principle in situations where preventing harm to one person led to a great deal more harm to others. For over a century in the United States, the medical profession has seemingly espoused the First law, in the form of the *primum non nocere*, but seems to have neglected the Zeroth law, at least when it comes to the question of universal healthcare- for it is in large part thanks to the efforts of physicians that the United States persisted, until recently, as the sole Western nation without a scheme for universal health insurance.

To be sure, America's failure to espouse universal coverage can be attributed to a host of factors: Southern racial policy [3]; insurance companies' fear of lost market share and increased regulation [3]; corporations' desire to keep insurance private so that work-based insurance could be used as leverage in labour negotiations [3]; and the individualistic, self-reliant, small-government mindset of a large segment of the U.S population. A discussion of all of these factors is beyond the scope of this paper, which instead will focus on one specific and influential factor: the role of physicians and the American Medical Association (AMA) in the century-long battle for health reform. My major questions are as follows: did the AMA, by focusing on individual-oriented private care options, break the zeroth law? If so, was this truly done in an effort to adhere to the First law? And even if this was the case- that doctors opposed public care because they

believed it would safeguard the rights of individuals- is the outcome truly in the best interest of individuals, and of society?

I will explore these themes by examining the AMA's historical record on this issue, beginning with a brief discussion of the rise of the AMA and medical professional sovereignty. I will explain how the AMA's drive to protect this sovereignty and its profits led to the retreat of presidents and administrators on the issue of health reform. I will then detail some of the battles that followed, culminating in the passage of Medicare and Medicaid. Finally, I will show how an increase in costs led to the very thing physicians dreaded: third-party interference in medical practice in the form of managed care. Throughout, I will examine the tactics and arguments of physicians, as well as the reality they helped to create, and test these actions and outcomes against the First and Zeroth laws.

Part 1: Early commitments to a private model

First we must ask the question: for what reason did the AMA decide to oppose the public model? Today, the medical profession is marked not only by its ability to make a significant difference in the course of disease and the lives of the sick, but also by the immense trust, wealth, and respect accorded to it by our society. It surprises many that this was not so in the 19th and early 20th century [4]. Medicine then was not necessarily a lucrative or well-respected vocation; it was a profession for young middle-class men looking to make a "respectable but not lavish income." [4] Doctors did not yet have access to the science that would transform the profession over the course of the next decades; instead, they found themselves in fierce, unregulated competition with hastily trained colleagues, druggists, hospitals, and providers of alternative care [5]. Because physicians were often unable to change the course of many diseases, offering instead- and only in some cases- the easing of pain and symptoms, universal access to medical care was, while not wholly ignored by reformers, at least overshadowed by the need for programs such as workers' illness compensation and workplace safety regulations [5]. It was in this environment of neglect and competition that the medical profession began to

organize in order to better its lot. Indeed, the founding 1847 charter of the American Medical Association [6] speaks of the need to protect the public from "quacks", and focuses a great deal on the rights of doctors as professionals. Creating a profession with an organized, political body which could successfully lobby the government for protections was a brilliant move for doctors, one which vastly reduced competition, gave physicians a monopoly over healthcare, and created a lens of professionalism through which the public began to view physicians. This created a social contract [7]: doctors were entitled to significant material rewards, respect and autonomy; in return, they had to uphold self-defined professional values, such as the right of a patient to confidentiality and the 'sanctity' of the doctor-patient relationship [3,8]. Yet, while these values have proven important to ensuring professional and ethical behavior towards individual patients, they have also been invoked in order to preserve a status quo that provided significant material benefit to physicians.

In the years before the Great Depression, when some European countries were implementing limited forms of state health insurance [3], some reformers in the U.S began pushing for universal care [4]. The general antipathy of the electorate towards large federal programs, coupled with unions who had some access to employer-based plans [3] meant that the AMA was able to attack and defeat the planned reforms. The AMA feared that once government was involved as a payer that its role would expand to the control of fees, best practices, and a patient's choice of doctor [3,8]. The AMA made it clear that it viewed private, fee-for-service, solo practice as the only valid form of practice [4], rejecting even group practice as 'socialized' and a threat to physicians' economic liberty [1]. It justified this position by referring to the aforementioned medical professional values it had crystallized during its development [4]. While many would argue that patient choice, confidentiality, and physician autonomy can exist in a publicly-funded system, in the early 1900s the American medical profession argued that these would be compromised in any compulsory care scheme – even though the alternative left a significant proportion of the population both uninsured and unable to afford care. Thus, without being able to read the minds of the AMA leaders of the day, it is impossible to ascertain to what extent this protection of the status-quo was a commitment to the first

law, and to what extent it was a commitment to the pursuit of self-interest. Pursuing the history, we shall see that, regardless what the initial reasons behind the AMA's defence of the fee-for-service model were, the outcome led to direct harm to society and to millions of individuals within it- a clear breach of the zeroth law.

The power of the AMA in the early debates on universal compulsory health insurance- and therefore its responsibility for the outcome- cannot be underestimated. Though it was backed by insurance companies [8], who did not want to see government expanding into a market they were eyeing, and unions, who had already negotiated plans with the major employers and who did not want workers to be dependent on the government [8], the AMA was the most vocal opponent of healthcare reform, and it was virtually unopposed [8]. As part of the landmark Social Security bill, President Franklin Roosevelt initially intended to include a plan for compulsory health insurance [8]. The response by the AMA was so fierce- with threats to mobilize the state medical societies, which had significant political clout and access to the electorate [8]- that Roosevelt, afraid that the entire social security bill would fail, dropped the section on health insurance in order to appease the AMA [8]. President Truman's efforts to succeed where his predecessor had failed met similar determined opposition by the AMA. The AMA and its subsidiary state associations hired publicists, bought radio and television ads, levied huge sums from physicians, instructed doctors to 'educate' patients about the ills of 'socialized medicine', and invoked the Red Menace, claiming that if compulsory health insurance became a reality, then full-on communism would be next [3]. By 1950 the AMA had carried the day, sapping not only the resolve of those in the Truman administration, but actually causing some political casualties by helping boot supporters of reform from office during that year's midterm elections [1]. What is perhaps worse is the AMA's treatment of dissenting doctors: physicians who supported reform were shunned, humiliated and insulted by their colleagues, who also refused to refer patients to them [3]; in short, as it sought to protect its professional sovereignty, Medicine forgot about one of the central tenets of professionalism: collegiality. The hyperbolic nature of the AMA's campaign, its unwillingness to negotiate with reformers, and its internal suppression of dissent, speaks either to a medical profession honestly afraid of the

looming spectre of communism- or to a group determined to protect its interests at the cost of its societal responsibilities.

Part 2: The Progress of Medical Science and the Cost of Private Practice

In the post-war world, better science and technology empowered physicians to help patients like never before and rising costs led to a renewed debate over who should pay for medical care. The fight of the AMA against any kind of universal health insurance continued into the 1960s, when President Kennedy and his staff, realizing that the fight for universal insurance was stalled, turned their attention to the increasing number of the elderly who could not afford medical care [9]. Meeting in secret to escape the notice of the medical community, and even collaborating with their Republican rivals [9], the Democrats under Kennedy and then Johnson proposed Medicare and Medicaid, health insurance plans for the elderly and the poor, respectively, that would act as extensions of Social Security. The AMA responded with "Operation Coffee Cup", which helped to launch Ronald Reagan's political career [2]. Reagan recorded an LP for the AMA on which he voiced his fear of 'socialized medicine'. The recording was distributed nationwide to physician's wives, who at their gatherings with friends would play the record, prompting many of them to write letters to their congressmen [2,3,9]. With the Unions finally supporting them [8], the Democrats were able to pass Medicare and Medicaid in 1965- but only after making several concessions to "organized medicine" [3]. The most important of these was the assurance that doctors would be entitled to their "customary fees" [3], which amounted to a complete lack of cost-control measures, no way to assess quality, and no way to curb increases in costs initiated by physicians themselves.

In 1965, pursuant to the passage of Medicare, hospital day fees jumped 16.5% and have continued to rise at a rapid rate since then; at least part of this hike can be attributed to increased doctor's fees [3,9]. GP's and internists' fees rose 25% and 40%, respectively, after the passage of Medicare- but pediatrician's fees stagnated (as their services were not covered by Medicare.) [3] Apparently, many doctors were happy to "take as much

Medicare money from Uncle Sam" [3] as they could. Seeing a blank cheque- and choosing to see it as a cheque from 'the government' instead as one from a society that had placed its trust in the medical profession, many doctors chose to enrich themselves- a clear violation of the Zeroth law.

Just as science was fulfilling its promise to empower doctors with the ability to cure and treat previously intractable conditions, medical costs climbed so steeply that those who needed care the most- often the poor, or the lower middle class who did not qualify for Medicaid- found that they could not access the care they needed, and government found itself focusing on cost-control instead of expanding coverage [9]. Of course, doctor's fees are not the sole reason for the high costs of medical care in the last few decades. Improved technology and a wider range of treatments have contributed to this rise, but when one compares the cost of treatments and doctor's visits in the U.S with identical care in other nations, one sees that American costs are far higher [9]. One of the major reasons for this disparity is that American physicians charge more for each service; this is why it is no surprise that American doctors are among the best paid in the world [9]. If the rising costs of care are indeed linked to doctor's rising fees, then we can see that U.S doctors have broken both the first *and* the zeroth law: by increasing fees they have made medical care less accessible to both individual patients who could no longer afford care, and to society at large. The only people who stood to *gain* from this was physicians- and while the first law would preclude physicians from harming their own economic freedom, the professional spirit the AMA claimed to be defending would certainly not countenance the idea that self-interest could be a valid influence in medico-political decision-making.

Rising costs and the commitment to a private insurance model meant that politicians concerned about the nation's health were forced to consider two things: the need to control costs, and the need to work within the existing private insurance structure. The need to control costs meant that expanding Medicare/Medicaid coverage was not a viable or popular option; the need to work with private insurers and the employers that paid them meant abandoning the hope for a larger government role in healthcare. This

world of rising costs and powerful insurance companies, a world created in large part by the AMA, would soon turn hostile towards its creators.

Part 3: The New Leviathan: Managed Care, the AMA's nightmare come true

Rising costs and powerful insurers led to a perfect storm which changed the face of medical practice in the United States. Corporations were angered by the increasing insurance premiums paid to insurers to cover their employees [3,9]. Government, fearing for the future of Medicare and Medicaid, needed to find a way to control costs [9]. Insurers wanted to reduce premiums in order to enrol more companies and their employees in their plans [9]. Thus the three major payers- government, insurers, and corporations, (the last of these two having been traditional allies of the AMA)- had a new common enemy: rising medical costs. Controlling costs meant exerting some level of control over the individuals who, by their own design, were the only professionals allowed to dispense medical care: doctors. Out of this need to control costs was born managed care- a system under which insurers issued guidelines for medical care which doctors had to follow in order to be reimbursed under the insurance plans their patients relied on to pay; under which doctors' files were reviewed by insurers who would penalize doctors for providing services the company deemed to be unnecessary; and under which patients were denied necessary or life-saving treatment because of its high cost (a cost, as we have seen, strongly influenced by doctors' remuneration) [3,9]. While managed care did control costs [9], the reality for many physicians was stark- they had become in many ways subservient to the construct they helped to create, a construct born of a struggle to defend medicine from the very control it had now fallen prey to. Physicians were indeed free to charge as they pleased, and patients could choose their doctor- but patients, without insurers, were usually unable to pay the costs of care; often, they could not choose *any* doctor, let alone the doctor of their choice. While some may see this as just desserts for a century of what can be construed as self-interested lobbying, it is important to remember the human cost of managed care: patients, *even those with insurance*- i.e, those who were already patients of doctors- were refused life saving care [3]; many of them had to go bankrupt or sell their homes in order to pay for treatments

taken for granted in other industrialized nations. This certainly constitutes a breach, a century in the making, of the sacred doctor-patient relationship that the AMA proclaimed itself to be safeguarding- a breach of the First law. While the new Leviathan of managed care and powerful insurance companies has been tamed in recent years by public outcry and certain provisions of President Obama's Affordable Care Act [9]- there is still a long ways to go to bring costs down, rationalize medical care and medical spending, and ensure that all who need care can access it.

Conclusion: The Zeroth Law Revisited

This paper has explored the history of physician opposition to universal healthcare in America, and explained how the high costs of care, driven in large part by doctor's fees, have led to not only a crisis of access but a struggle for control over medical decision making between insurers and doctors. So have American physicians violated the Zeroth Law, the requirement that our actions first do no harm to humanity? I venture to say that this is the case. Because of the efforts of the AMA, public plans were defeated or passed with significant concessions to physicians, private insurers and managed care stepped in to fill the gap, and medical spending has soared. The U.S spends more than any other nation on healthcare, and yet their health record, when compared to other developed nations, and especially when it comes to primary and preventative care, is wanting [3,10]. The actions of physicians have therefore directly impeded the public's access the healthcare. The AMA has based much of its platform around the defence of patient choice and physician freedom- the need to do no harm to individuals- and yet, the outcome of their activism has, indeed, harmed individuals, especially patients who could not afford the best care available (or any care at all) and doctors who had to work under the oversight of managed care if they wanted to be reimbursed by insurers. Thus, while it claimed to be defending the first law, the AMA seems to have broken it as well. This calls for some soul-searching in the medical profession, and for a decision to commit to the true purpose of medicine: to serve patients. American medicine has broken two fundamental ethical laws, and it is up to the AMA and American physicians to have the

courage and foresight to address these breaches if they wish to retain the vital trust of the public.

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