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A Warrant for Pain: Market Liberalism c. 1970-2010

Abstract

Bad ethics make for bad economic outcomes. Bad ethics are defined hedonically and narrowly, as the infliction of pain on others for private advantage. The infliction of pain is often justified by "Just World Theories", which state that everyone gets what they deserve. Market liberalism (and its theoretical underpinning in neoclassical economics) is one theory of this kind. In The Theory of Moral Sentiments Adam Smith has a model which explains the reluctance to inflict this kind of pain. It is premised on reciprocity. This model depends on innate virtue, which is unrealistic, and an alternative model is proposed, which is based on signalling and is more pragmatic. Finally, the micro and macro failure of the American health system c. 1970-2010 is explained in terms of the shift in policy norms from "first do no harm" to "let the buyer beware" (caveat emptor).

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A Warrant for Pain: Market Liberalism c. 1970-2010

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Since the 1970s, public policy in English-speaking countries has been guided by two doctrines. The first is selfishness (or more grandly, 'rational choice'), namely that people are motivated primarily by self-regarding interests which they pursue in market exchange. The second doctrine is that selfishness is good. An 'invisible hand' ensures that market exchange is efficient. Wherever possible, therefore, production, distribution, and exchange should be transacted in markets, and should respond to prices. I call these doctrines 'market liberalism' in preference to 'neo-liberalism', in order to encompass pragmatists, neo-Keynesians, and other policy advocates who share many of the same general objectives. These doctrines are attractive to the successful: the managers and owners of private-sector companies, politicians and public sector managers, journalists and academics. These elites have done well during the last three decades. Most other people have fallen behind.

But are these doctrines true? Their core premises are insecure. It has never been proven that markets always provide the most efficient economic outcomes; it is not even easy to determine what such efficiency would consist of. People often make choices which are not intended to maximise their economic advantage. Financial motivations can crowd out intrinsic ones, such as compassion, public service, and professionalism. Those who buy and sell for their own advantage, have no incentive to seek overall efficiency, and efficiency does not just happen by itself.

The doctrines of selfishness and of market efficiency are often presented as hard-nosed conceptions of immutable reality. It is supposedly not the business of the economists to make moral judgements. Implicitly, however, and often openly as well, these doctrines also imply ethical claims: selfishness and market payoffs are presented not only as true, not only as efficient, but also as just and proper. An alternative view is that both types of claims, those from reality and those from justice, are
self-serving. Indeed that is what we should expect if we truly believed them. That critical view is developed here, in three successive parts.

First, that selfishness and the invisible hand constitute a bad model of reality. Like other bad models, and because they are bad models, they provide a licence to inflict pain. Secondly, an alternative normative model is sketched out. For a better model I reach back to Adam Smith. Economics today appears to be trapped in a blind alley: the doctrines of efficient markets and the policy norms they endorsed, have failed repeatedly and badly. They are not sufficient to explain the success of capitalism and its variants, and they do not account for its failures. I dwell on Smith here at some length, because his authority is claimed by market liberals as providing legitimacy for their doctrines, and also because his real doctrines are different, are attractive and are ethically relevant. In his account, the motivation of selfishness is tempered by the quest for approbation. Individual well-being depends on society. His model is realistic and subtle. It shows that markets work well when they are truly competitive and impersonal. But in reality, even in modern societies, competitive and impersonal settings are the exception. When there is personal interaction (as in a good deal of economic exchange), mutual obligation enters the calculus of advantage. The third section is empirical. It applies this critical view to contemporary

American health markets, as an example of the practical failure of rational choice and invisible hand doctrines.

Ethics is usually taken to be separate from economics. Economics, it is claimed, is indifferent to ends.[1] Agreement in ethics is difficult to reach, but the avoidance of pain and death provides a criterion which even an economist will not be indifferent to, once it is pointed out. The neglect of ethics, I shall argue, leads not only to moral failure, but also to failures of economic analysis and policy.

I

The amorality of economics is disquieting, but it is not easy to pin down what might be wrong about it, and to show that it is harmful. Ethics aspires to achieve the Good, and it is difficult to agree on the nature of that Good. Plausible arguments are made for principles which are incompatible with each other. Both Freedom and Justice are attractive, for example, but the two principles are not easy to reconcile.

A concept from social psychology may help: it is 'Just World Theory'. The basic idea is simple: a 'Just World Theory' says that everyone gets what they deserve. If the Inquisition burned heretics, that was only what they deserved. If Kulaks were exiled and starved in Soviet Russia, they only got what they deserved. Likewise the Nazis and the Jews. Just World Theories are ubiquitous. The criteria are political, religious, ethnic, gendered, and cultural. They justify the infliction of pain. Classical Liberalism is also a Just-World Theory. Milton Friedman writes, 'The ethical principle that would directly

[1] Robbins, ***Nature and Significance of Economic Science***, chs. ii.2-3; vi.3-4; DeMartino, ***Economist's Oath***, ch. 1.

justify the distribution of income in a free market society is, "To each according to what he and the instruments he owns produces."' In other words, everyone gets what they deserve.[2]

If there cannot be agreement about The Good, perhaps it can be found over The Bad? To achieve broad agreement, The Bad needs to be defined tightly. We take a narrowly hedonic approach and focus exclusively on pain. Physical pain is not good. It provides a warning signal, but otherwise there is little to be said for it. Likewise Death is sometimes sought out by individuals for themselves as being the Lesser Bad, but it does not have much to recommend it.

I propose an ethical criterion of 'Warranted Pain'. The criterion is: 'Do Not Inflict Unwarranted Pain or Death'. Who would wish to argue the opposite? Pain or even death are not forbidden, but they require a satisfactory warrant. Pain or death need to be justified. That focuses disagreement on the quality of the warrant. What benefits can be justified by the infliction of pain or death? How much good can the infliction of pain and death deliver, and to whom? The principle is not absolute: but it works to narrow the space for disagreement. Once the warrant is on the table, we can reach for our ethical intuitions.

For example for the purpose of cost-benefit analysis of regulation, a life is evaluated at about $6.1 million. This figure is normally arrived at by asking what premium is required to pay people in risky occupations, where the risks are known. If the cost of a protective measure is more than $6.1 million per life saved, then it will not be implemented. This is a warrant for somebody's death. But is it a good warrant? To begin with, the vast majority of workers actually turn down the risky deal on which this figure is based. Those who choose risky occupations are likely to be atypical, both in their appetite for risk, and their economic

[2] Friedman, ***Capitalism and Freedom***, pp. 161-2..

circumstances. So life is undervalued. The second point is that this is not the value of a particular life, but the value of the risk. It would be the aggregate of 6.1 million people each paying a dollar each to avoid a 1/6.m million chance of death. People are paid a premium to take on a risk, not to die. A single, particular life is unpriceable. You cannot pay somebody $6.1 million dollars for permission to kill them. Furthermore, in a market economy, those who take on the risk, rarely get the benefits. If the repeal of a costly regulation benefits 'the economy', those exposed to the risk are worse off, and those who were previously regulated are better off. Not society 'as a whole'.

The corporate insistence on reduced regulation increases death and injury for workers. How much pain and death does laissez-faire warrant? And the gain goes whom? Instead of the generalities of purported 'freedom', we can focus on metrics: does privatisation actually increases productivity, who stands to benefit, and can the gain for shareholders and managers justify disease and death for consumers and workers? If the price of competition is inequality, are the benefits worth an expanding gap in life expectation, even if on average, all classes benefit? Or if more gain at the bottom could be had for less at the top? And what if all classes do not benefit? And if productivity does not increase?

There is no simple algorithm for such questions, so this is the point where ethical intuitions can enter. Agreement may still be elusive, but the issues and metrics acquire a sharper focus, and show how to make and defend an ethical judgement. In policy, the criterion of warranted pain implies that a bad ethical call has a cost in the currencies of pain and death. And if economic output is all you care for, then pain and death, even of others (as we shall see), can pull down productivity and welfare. The criterion appears to be narrow, but it can do a lot with a little, not only in ethics, but also in policy.

In science, the test of a theory is what grounds it gives for belief ('justification'). A rough and ready test is how well the model fits with experienced reality. When used to derive policy, an economic model not only describes the world, but aspires to change it. For example, the market-liberal model of 'rational expectations' implies that government interventions will be anticipated, and are therefore futile. If the model is wrong, the policy is likely to be harmful. In policy, if the model is bad, then reality has to be brought into line by means of coercion. How much coercion is required provides a rough measure of a model's validity.

Coercion is a feature of societies that hold strong Just World Theories. Such societies have resorted to witch-hunts, secret police, concentration camps and worse. Classical liberalism and its offspring, neo-classical economics, are also such Just World Theories. They accept as legitimate any existing endowments and property rights, and they endorse the market distribution of final rewards. Market-liberal societies make Just-World claims, and also inflict a great deal of coercion, pain, and death: the United States is the most market-oriented of affluent societies, and also leads the developed world, and much of the rest, in the size and severity of its penal system. It used to tolerate lynching, and continues to inflict the death penalty. It denies secure healthcare to one-sixth of the population, and permits scores of millions of firearms in private possession. It has stationed troops all over the globe, and uses them readily. It leads the developed world in the proportion of supervisory and coercive 'guard labour'. More than a million people have been killed by guns in the United States since 1968, and more than two million were in prison at any one time during the last decade. How much pain is warranted has been discussed literally with regard to the torture of terrorist suspects, in both the USA and apparently in the UK. Waterboarding was found to be acceptable. All this without considering pervasive incidence of poverty, hunger, illness, and early death arising at the lower end of society as a consequence of labour market inequalities and social neglect. Lower income people also suffer pain more frequently than those of higher income. These costs can be measured against the tangible and intangible benefits of 'economic freedom', such as they are, and such as it is.

II

Every economic exchange creates a condition of dependence, and an opportunity for duplicity or defection. Much of the time, this makes no difference: buyers and sellers have ways to police each other. Conventions, law, morality and regulation keep defectors in check. In times of turbulence and transition, however, opportunities for defection can open up. Self-interest means that private advantage is the only motive. The invisible hand implies that self-interest promotes collective welfare. As Mandeville put it in 1714, 'Private Vices, Publick Benefits'. 'The worst of all the multitude,' he wrote, 'did something for the common good'.[3]

These two interlocking doctrines, self-interest and the invisible hand, carry through to the present day. But are they true? We still don't know. The primacy of self-interest is no more than speculation. The invisible hand remains an article of faith. As norms for conduct,

[3] Mandeville, ***Fable of the Bees***, p. 9, line 17.

these two doctrines are asymmetric. The pursuit of self-interest invites defection now. In contrast, the 'Publick Benefits' promised are remote and uncertain.

The concept of an 'invisible hand' is identified with Adam Smith. A famous passage in ***The Wealth of Nations*** aligns it with the interests of the businessman who,

> … intends only his own gain, and he is in this, as in many other cases, led by an invisible hand to promote an end which was no part of his intention. Nor is it always the worse for the society that it was no part of it. By pursuing his own interest he frequently promotes that of the society more effectually than when he really intends to promote it.[4]

> Note that the criterion is the benefit for ***society***, not those of the individual. Another famous passage says that,

> It is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard to their own interest. We address ourselves, not to their humanity but to their self–love, and never talk to them of our own but of their advantages.[5]

These lines can be taken as a warrant for self-seeking. In the spirit of Mandeville, do your worst, it is only for the best.

But Smith held Mandeville in contempt. Mandeville, he wrote disapprovingly, 'seems to take away altogether the distinction between vice and virtue, and of which the tendency

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[4] Smith, ***Wealth of Nations***[WN], vol. 1, IV, ii.

[5] Smith, WN I.ii.2

is, upon that account, wholly pernicious… All public spirit, therefore, all preference of public to private interest, is, according to him, a mere cheat and imposition upon mankind.'[6]

Smith opens his earlier book, ***The Theory of Moral Sentiments***, by invoking our capacity for 'sympathy': 'How selfish soever man may be supposed, there are evidently some principles in his nature, which interest him in the fortune of others.'[7] 'Sympathy' is independent of, and compelling as, self-interest. This view infuses the book with a warm glow. But the claim is a little puzzling. How soever attractive such innate benevolence might be, it is not entirely credible as a prime motivator. It can make more sense, however, if what really matters is not sympathy ***for*** others, but the sympathy ***of*** others for ourselves: 'nothing pleases us more than to observe in other men a fellow-feeling with all the emotions of our own breast.'[8] Note: 'Nothing pleases us more'. The primacy of other people's sympathy for us is meant literally.

> What are the advantages which we propose by that great purpose of human life which we call bettering our condition? To be observed, to be attended to, to be taken notice of with sympathy, complacency, and approbation, are all the advantages which we can propose to derive from it. It is the vanity, not the ease, or the pleasure, which interests us. [9]

As a motive that is equally compelling with self-interest, the approbation of others is more credible than altruistic sympathy. But in order to be of any value, the approbation of others has to be genuine. Unmerited approbation is not valued.[10] So it needs to be

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[6] Smith, ***Theory of Moral Sentiments*** [TMS], VII.ii.4.6.
[7] TMS, I.i.1.1.
[8] TMS, I.i.2.1.
[9] TMS, I.iii.2.1.
[10] TMS, III.2.7.

authenticated. That is why Smith opens his argument by asserting the existence of unilateral sympathy. This is necessary for his model: for the sympathy of others to be credible, we need to assume that they have the capacity for one-sided sympathy. And for this capacity to be credible, we need to have it ourselves. Our capacity to sympathize ***with*** others, has to be assumed in order to make the sympathy ***of*** others credible to us. This need for approval has been wired in: 'Nature, when she formed man for society, endowed him with an original desire to please and an original aversion to offend his brethren… She rendered their approbation most flattering and most agreeable to him for its own sake; and the disapprobation most mortifying and most offensive.'

How to authenticate other people's approbation? We do not have access to their hearts. But we have access to our own. Smith uses the device of 'the impartial spectator'. Approbation needs to be deserved (in an echo of the Golden Rule, 'As every man doth, so shall it be done to him.')[11] In order to take pleasure in praise, one has to be worthy of it. Individuals know whether they are praiseworthy better than any external observer. They should expect no more praise than a well-informed and fair-minded stranger might be willing to accord: 'We endeavour to examine our own conduct as we imagine any other fair and impartial spectator would examine it…. We suppose ourselves the spectators of our own behaviour, and endeavour to imagine what effect it would, in this light, produce upon us.'[12] The agent views his own conduct as other people might see it, and cannot, in fairness, claim any special standing, unless it was truly deserved. This point of view, of the 'impartial spectator', is internalised so that the sense of desert no longer depends on the presence or

[11] TMS, II.ii.1.10.
[12] TMS, III.1.2, III.1.5.

absence of actual praise.[13] For this model to work, Smith assumes that the individual not only has a natural desire for praise, but also an innate desire to ***be*** virtuous: 'Nature has endowed him not only with the desire of being approved of, but with the desire of ***being*** what ought to be approved of.'[14] But the assumption of innate virtue may be a step too far: is it really credible? Even Smith admits that the capacity for sympathy is not restricted to the virtuous and the humane.[15]

A similar concept to 'sympathy' is provided in my own 'Economy of Regard'.[16] In this model, approbation is authenticated differently. It does not require innate virtue. Instead, approbation is communicated by means of an external signal, a 'gift' (the term is applied to any voluntary transfer). The recipient appraises the quality of approbation by evaluating the appropriateness of the signal (as embodied in the 'gift'). This does not require virtue. Hence, regard can motivate anyone, villains as well as virtuous, and is sustained so long as it is reciprocated. This is less demanding, and more realistic, than assuming, as Smith needs to, that people are imbued with 'the real love of virtue, and the real abhorrence of vice.'[17] Nevertheless, if social norms are benign, then a good deal of co-operation, pro-social behaviour, and reciprocity, can be motivated by the quest for approbation alone. Smith is right to perceive that some level of shared virtue is needed to motivate the cycle of reciprocity.

[13] TMS, III.1.5.
[14] TMS, III.2.7, (italics added).
[15] TMS, I.i.1.1.
[16] Offer, 'The Economy of Regard'.
[17] TMS, III.2.7

For Smith, ethical obligation does not mean self-denial: it is grounded in the pursuit of personal benefit, in 'reflected self-interest.'[18] Ethical norms have consequently evolved as part of human nature. This is also consistent with recent experimental findings, which have a shown that the commitment to fairness is widespread, but falls short of being universal.[19]

The 'invisible hand' is invoked only once in ***The Wealth of Nations.*** Its effectiveness is qualified: it is merely 'not always the worse for society'; and it does not ***necessarily*** promote the interests of society, it only does so 'frequently'. The meaning it has subsequently acquired may not have even been intended by its author.[20] In contrast, the 'impartial spectator' (the internalised norm of propriety), is mentioned sixty-six times in Smith's first book ***The Theory of Moral Sentiments***, and its authority, the authority of conscience, is taken as binding. It was also Smith's final word: a revised sixth edition was published just before his death.

How to square these doctrines of ***laisser-faire*** with those of moral obligation that seem to coexist in Smith, and even more so, how to square the difference between Smith and Mandeville? The contradiction is real. My response is that much of the time we do not have to choose. The invisible hand applies where markets are impersonal and competitive, and where they trade in uniform commodities. In contrast, the impartial spectator's ethical norms apply whenever exchange is mediated by personal relations. Approbation may be valued highly, but impersonal markets cannot supply it.[21]

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[18] Montes, '***Das Adam Smith Problem***', p. 74.

[19] Camerer and Fehr, 'Measuring Social Norms and Preferences Using Experimental Games '.

[20] Grampp, 'What did Smith Mean'; Rothschild, ***Economic Sentiments***, ch. 5.

[21] Offer, 'The Economy of Regard'; Nieli, 'Spheres of Intimacy' applies the impartial spectator in the case of personal intimacy, the invisible hand for impersonal relations. Viner has an analogous concept of 'social distance'. (Viner, ***The Role of Providence***, pp. 80-82). Both are pointed out in Montes, '***Das Adam Smith Problem***'.

This is confirmed in Smith's chapter 'Digression concerning the Corn Trade', in ***The Wealth of Nations***.[22] In the British ***ancien regime,*** the grain trade was regulated by means of maximum prices and restrictions on export and hoarding. Their purpose was to prevent extreme price rises in times of shortage. E.P. Thompson regarded these arrangements as a reciprocal 'moral economy', in which the poor provided deference, and the rich guaranteed subsistence.[23] Smith argued that regulation was misguided, and that a free market was more likely than any regulator to guarantee subsistence, except in the most extreme circumstances. Grain production and trade, the largest industry in the country, was too extensive for any trader to capture. Merchants who raised prices above the competitive level would be undercut by competitors.

The view that merchants withheld grain deliberately in times of dearth gave rise to food riots; the fear of riot deterred respectable traders, and the business therefore attracted 'an inferior set of dealers… together with a number of wretched hucksters'.[24] The accusation of impropriety became self-fulfilling. The implication is that where exchange was discretionary and personal, it was governed by the benevolent norms of the impartial spectator. But in impersonal, competitive markets, virtue does not matter; it makes no difference that middlemen in the grain trade were short on virtue. The impersonal discipline of competitive markets made them serve the public good.

The advocates of market liberalism naturally concurred with this analysis. In 1976, the Mont Pelerin Society, an international intellectual leadership conclave of market liberals,

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22 WN, IV.v.b, p. 524.

23 Thompson, 'Moral Economy'.

24 WN, IV.5.47, 541.

assembled in Scotland to commemorate the bicentenary of the ***Wealth of Nations***. The Chicago economist Ronald Coase explained

> For that extensive division of labour required to maintain a civilised standard of living, we need to have the co-operation of great multitudes, scattered all over the world. There is no way in which this cooperation could be secured through the exercise of benevolence. Benevolence, or love, may be the dominant, or, at any rate, an important, factor within the family or in our relations with colleagues and friends, but as Adam Smith indicates, it operates weakly or not at all when we deal with strangers…The great advantage of the market is that it is able to use the strength of self-interest to offset the weakness and partiality of benevolence.[25]

Milton Friedman also underlined the difference between the intimate sphere where obligation was appropriate, and the impersonal one, where it was impractical.

> On the moral level, Smith regarded sympathy as a human characteristic, but one that was itself rare and required to be economised. He would have a argued that the invisible hand was far more effective than the visible hand of government in mobilising not only material resources for immediate self-seeking ends but also sympathy for unselfish charitable ends.[26]

But Smith never regarded sympathy as being scarce. In fact, he considered it to be innate and universal. Like Friedman, Coase also twisted the existence of benevolence into an argument against collective provision:

> this should not lead us to ignore the part which benevolence and moral sentiments do play in making possible a market system. Consider, for example, the care and

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[25] Coase, 'Adam Smith's View of Man', (1976) fol. 13, Hayek Papers 163/4.
[26] Friedman, 'Adam Smith's Relevance for 1976' (1976), Hayke Paper 163/3

> training of the young, largely carried out within the family and sustained by parental devotion. If love were absent and the task of training the young was therefore placed on other institutions, run presumably by people following their own self-interest, it seems likely that this task, on which the successful working of human societies depends, would be worse performed.[27]

In this market-liberal argument, everything hangs on relative scale of impersonal markets, in comparison with the aggregate scale of those forms of exchange that involve personal interaction.

Chicago economists assume that impersonal markets predominate. This is suggested by the pervasive assumption that we live in competitive market societies. But for one thing, much commercial provision is anything but competitive. And incentives of regard continue to pervade large sectors.[28] They dominate production and exchange within the household (including the creation and raising of children), and those segments of production which depend on personal interaction: health, education and personal care, small teams, personal salesmanship, family farming, the military, hierarchical bureaucracies of various kinds. The boundaries of self-regard, pseudo-regard, and authentic regard shift in response to technological conditions, modes of production, cultural norms and personal preferences. Overall, taking the imputed money value of household production (including childcare), and the public sector as well, less than half of final welfare is allocated through markets. In advanced societies, people have deliberately kept away from impersonal markets for most of their satisfactions. Even within markets, a good deal of exchange involves interpersonal interaction, e.g. in marketing, hospitality, and personal services. The share of services has

[27] Coase, 'Adam Smith's View of Man', p. 13.

[28] Roughly quantified in Offer, 'Economy of Regard'.

come to dominate output in western developed societies, and services typically require interpersonal interaction and trust. Teachers, doctors, lawyers, waiters, hairdressers, salespeople and financial managers too, all owe the client a duty of care. Hence, both Mandeville and Smith can be right at the same time, in different sectors and activities. The challenge for policy is not to get the invisible hand to displace the impartial spectator, or vice versa, but to identify the appropriate scope for each. As the relative share of commodity production declines in advanced societies the impartial spectator's duty of care only gains in importance.

In view of the influence of the invisible hand doctrine, and of Smith's authority, one might assume that it is founded on compelling analysis. Most of his argument, as in the Corn Trade chapter, is descriptive: Smith's 'System of Natural Liberty' is appropriate to competitive markets, which can discipline market traders. Analytically, however, invisible hand statements take the form of causal propositions: action A leads to result B – they imply a mechanism at work. But Smith did not try to show ***how*** it worked, except, as above, by anecdote, example, or assertion. The invisible hand itself is alchemy– a felicitous phrase but without any Newtonian clockwork to drive it.[29]

And so it has remained. The invisible hand is at the heart of economics, and provides a social justification for the primacy of self-regard. But it is no more than an article of faith. Taken as a formal theorem, for almost two centuries nobody was able to prove it. In the 1950s, the 'Two Theorems of Welfare Economics', were proven mathematically by Arrow and Debreu. These theorems were proclaimed as the final demonstration of the invisible

[29] Montes ,'Newton's Real Influence'.

hand theorem.[30] They show that every general equilibrium is associated with a state of Pareto efficiency (no one can be made better off without someone else being made worse off). This notion of efficiency has generally been adopted as the touchstone of economic performance. The two theorems have been hailed as a proof of the invisible hand postulate, but they are not in fact such a great advance: the proof is clever and difficult, but it only obtains if at any moment there are markets available for all goods until the end of time, and if everybody is aware of all prices. Needless to say, these conditions cannot ever be satisfied.

Furthermore, the criterion of Pareto efficiency is not particularly attractive.[31]

The point of departure is a demonstration by Edgeworth that for two persons trading with each other there is a deal that maximises their joint payoff (in fact, the deal has such a single solution only under restrictive assumptions, and is otherwise indeterminate).[32] Likewise, in the two theorems of welfare economics, there is a general equilibrium (of all simultaneous trades in the economy) that maximises aggregate payoffs for every set of initial endowments. When the butcher and the baker are trading bread and meat in order to make their sandwiches, the joint maximum is easy to measure. But what units can be used to measure everybody's satisfaction or utility? How can we compare even the value of a single dollar, for the rich and for the poor? If it is 'willingness to pay', that surely depends on 'ability to pay', that is to say, on initial endowments and their ownership. The rich can always outbid the poor. And why should the property rights of the rich be taken as given? As Bentham pointed out, property depends on society. If one person has everything and

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30 Arrow and Hahn, ***General Competitive Analysis***, p. 5.

31 Bromley, 'The Ideology of Efficiency: Searching for a Theory of Policy Analysis'.

32 Mirowski, 'Introduction', in Edgeworth and Mirowski, ***Edgeworth on Chance***, pp. 24-29.

everyone has nothing, then welfare will be raised by redistributing from one to all, without regard to prior claims.

The Pareto criterion of so-called efficiency enshrines the status quo, and does not take into account that other distributions might be more equitable or could provide more welfare overall. Indeed, no objective criterion for maximizing welfare overall is provided. Every person is the only judge of their welfare. Every person has a veto, and can cry a halt. The criterion is undemocratic. It is equivalent in this respect to the principle of unanimity demanded by Public Choice advocates such as James Buchanan. And like public choice doctrine, its main effect is to provide legitimacy and protection for the existing distribution of property, however unequal, and however acquired.

But the pre-requisites even for this dubious notion of efficiency are non-existent. Kenneth Arrow (himself one of the two authors of the welfare theorems) has written that 'a complete general equilibrium system, as in Debreu (1959), requires markets for all contingencies in all future periods.' Another High Theorist (and Arrow's co-author), Frank Hahn, wrote that 'the complete market hypothesis is completely falsified'.[33] John Williamson, a senior IMF economist who had earlier coined the term 'Washington Consensus', has written,

> One does not have to be some sort of market fundamentalist who believes that less government is better government and that externalities can safely be disregarded in order to recognize the benefits of using market forces to coordinate activity and motivate effort. This is a proposition that is such a basic part of economic thinking ***that***

33 Arrow, 'Economic Theory and the Hypothesis of Rationality', p. 72. Hahn, 'Reflections on the Invisible Hand', p. 121.

> ***it is actually rather difficult to think of a work that conclusively establishes its truth****.* But there are a variety of indirect confirmations.[34]

This is just it. Theoreticians agree the general equilibrium cannot be made to work.[35] That markets are the best systems of delivery is not a universal truth, and thus depends on local circumstances. The conditions required by perfect competition can never can be satisfied. In the absence of perfection, all there is 'Second-Best'.[36] It is everything or nothing. Even in theory, the economy does not automatically become more productive as railways (for example) are incrementally privatised.

In classical economics from Adam Smith to John Stuart Mill, the object of policy was not the interest of individuals, but the welfare of society as a whole. Smith wrote,

> The wise and virtuous man is at all times willing that his own private interest should be sacrificed to the public interest of his own particular order or society. He is at all times willing, too, that the interests of this order or society should be sacrificed to the greater interest of the state sovereignty, in which it is only a subordinate part.[37]

Note the role for virtue and wisdom: man is not the slave of desire. He is capable self-command, and of acknowledging a greater good beyond himself. This is also consistent with nineteenth-century Utilitarianism, an Other-directed ethical doctrine endorsed by most English Victorian economists, whose precept was 'The Greatest Good of the Greatest Number'. Like Smith and Hume, Bentham, Mill, Jevons, Sidgwick, Marshall, Edgeworth, and Pigou held a view not unlike the Stoic doctrine that, in the words of Smith, 'We should

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[34] Williamson, 'A Short History of the Washington Consensus', p. 26. Italics added.
[35] Ackerman and Nadal, ***The Flawed Foundations of General Equilibrium****.*
[36] Lipsey and Lancaster, 'General Theory of Second Best'.
[37] TMS, VI.ii.3.3.

view ourselves, not in the light in which our own selfish passions are to place us, but in the light in which any other citizen of the world would view us.'[38]

In contrast, more recent economics makes a virtue of self-regard: it prides itself on being counter-intuitive. Concern for others is soft minded cheap talk. It may be an ethical injunction, but that is only a 'value'. Those who want to understand the world are told to separate 'ought' from 'is'. Modern social science prides itself on 'Value Freedom'.[39] Scientists describe things as they are, not as they ought to be. But the tough-minded economist who has no time for ethics is also taking an ethical position. The Pareto-efficiency criterion has nothing to say about distribution, which it takes as given. It is silent about equity. That silence is also an ethical position, which relies on the counter-intuitive assumption that well-being is entirely subjective and cannot be compared from one person to another. For Lionel Robbins, an influential exponent of neoclassical doctrine in the 1930s, 'me-first' was founded on the 'Indisputable Facts of Experience'.[40] Following on Robbins, in standard microeconomic theory, e.g. in the theory of household consumption, 'me-first' is simply taken as a premise which needs no justification.

But the facts of experience are no such thing. Others have different intuitions.[41] As an empirical postulate, self-interest is tautological: any choice observed can be attributed to self-interest. If, however, it means that everyone is always maximising their material or financial or market advantage, then it is manifestly untrue. The psychological model of unbounded self-regard is not credible. Friendship, love, loyalty, charity, patriotism, civility, solidarity, integrity, impartiality, which are ubiquitous and compelling, depend on the

[38] TMS, III.3.11
[39] Bromley, 'the Ideology of Efficiency', pp. 89-91.
[40] Sugden, 'Can Economics Be Founded on 'Indisputable Facts of Experience?'
[41] Sugden, op. cit.

premise of unbounded self-regard being wrong. The family, religion, the workplace, the state, the nation, the military – some of the most powerful and enduring institutions assume that individuals will not always put themselves first. And values are not inscrutably subjective. The focal points of market prices and their elasticities indicate a broad social consensus on what is valuable. Market-liberals themselves have realized that for microeconomics to have any predictive power, it is necessary to assume that preferences are 'assumed not the change substantially over time, not to be very different between wealthy and poor persons, or even between persons in different societies and cultures.'[42] They have extended this into macro-economics with the device of 'representative agent', i.e. a model of the economy as a whole in which the multitudes are assumed to act as one. In advocating business-friendly de-regulation, market liberals are happy to use cost-benefit analyses based on 'willingness to pay', and have no problem aggregating dollars which have very different subjective values to different people.

The self-regarding actor re-appeared in a particularly de-socialised guise in the 1940s. He featured in early game theory and in the Savage axioms of rationality, laid down in the 1950s. Duncan Black defined the self-seeking rational voter, and laid the foundation for Anthony Downs's ***Economic Theory of Democracy*** in the 1950s. In the 1960s, Mancur Olson argued the futility of collective action. By the 1970s, methodological individualism and rational choice had become the standard assumptions in economics and political science. These doctrines are so pervasive that it is easy to overlook how radical they are. They may neutrally be described as sociopathic, i.e. inimical to social co-operation. In social science discourse, the test of common good was simply set aside. Rational choice

[42] Becker , ***The Economic Approach to Human Behavior***, p. 5.

theory does not even require the blessing of the invisible hand.[43] That is bolted on as an afterthought. Rational choice, the pursuit of self-interest, was developed as a mathematical and rigorous theory.[44] The invisible hand, in contrast, its putative justification, remains fuzzy and unproven.

There is a puzzle as to why, from the 1950s onwards, such an extreme form of self-regard should have beguiled social scientists in economics, political science, and philosophy, as being so manifestly self-evident. In evolutionary biology as well, the tide flowed from group to individual selection. Even Rawls's ***Theory of Justice,*** the dominant work in moral and political philosophy, took individual self-interest, 'behind the veil of ignorance', as its point of departure. It is not generally known that Rawls was briefly a member of the Mont Pelerin Society (proposed by Milton Friedman in 1968), although he withdrew before the publication of the ***Theory*** in 1971.[45] In keeping with this orientation, Rawls privileges 'freedom' as the highest good. Many other philosophers and political scientists have followed his lead. Other social sciences, notably sociology, anthropology, and psychology, maintained a sceptical distance, and earned the disdain of 'tough-minded' rational choice colleagues.

Maybe the posture of 'toughness' is a clue. Decisiveness can be attractive, and it is only a short step to extol the rough virtues of manliness. In American culture in particular, 'toughness' is held out as a virtue. A robust Social Darwinism coexisted in nineteenth-century America with an intense religiosity – indeed the two were regarded as

43 Elster, 'The Nature and Scope of Rational-Choice Explanations'.

44 Gilboa, ***Rational Choice***.

45 Mont Pelerin Society, Proposals for Membership, September 1968, Mont Pelerin Society Papers 44/1, Hoover Institution Archives; Mont Pelerin Society, 'List of Members' [1970], Friedman Papers 87/5, Hoover Institution Archives; Mont Pelerin Society, list of lapsed members, 1972, Friedman Papers 87/2;

complementary. Success was Godly, failure deserved.[46] The British gentlemanly ideal was the opposite: self-control rather than self-assertion, 'gentility' rather than hardness.[47]

Toughness is a personal virtue when it signifies the ability to ***endure*** pain. but in the social and political rhetoric since the 1970s, toughness has mutated into a willingness to ***inflict*** pain: the rhetoric is 'hard choices' (hard for me to hurt you), 'cruel to be kind' or more directly 'if it ain't hurting, it ain't working'. When combined with a license for self-seeking, such 'toughness' might well inspire wariness rather than admiration.

The ideal of 'Freedom' is associated with toughness, to the extent that it means independence, 'standing on one's own feet'. Freedom has an exalted lineage in the historical struggle against religious oppression and in resistance to external and domestic tyranny. The historical quest for freedom is replete with martyrdom. In the European tradition of Rousseau and Kant, 'freedom' is also about autonomy, and the scope for moral or personal will. In the Anglo-Saxon tradition, however, it stands primarily for the security of property rights, although both other meanings are implied as well.[48] In the American and British traditions, 'freedom' was compatible with the ownership of slaves: indeed, it dignified the ownership of slaves.[49] Chicago economist Robert Fogel won the Nobel Prize in part for a book that argued that slavery was 'efficient'.[50] No Pareto efficiency veto for the slaves; no more than there was for the subjects of the Pinochet dictatorship, lauded for its market liberalism and advised by Milton Friedman and James Buchanan. For market liberals, freedom does not extend to speech: both the Mont Pelerin Society and the Chicago

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46 Hofstadter, ***Social Darwinism in American Thought***, especially chapter 3 on William Graham Sumner.

47 Girouard, ***Camelot***; Mason, ***The English Gentleman***.

48 MacPherson, ***Possessive*** Individualism; McGilvray, ***Invention of Market Freedom***.

49 Brown, 'Free Enterprise and Economics of Slavery'; 'Adam Smith' s view of Slaves As Property'.

50 Fogel and Engerman, ***Time on the Cross.***

Department of Economics, the sectarian incubators of market liberal thought, are clubs for those with like-minded opinions. Protection of property is commonly conflated with individual autonomy and discretion, although possession of property and freedom for some, as Bentham once recognised, limits the autonomy of others. In the market discourse of the 20th century, 'freedom' has become just another word for self-interest, and has become a ubiquitous on right-wing mastheads. As in the case of 'toughness', personal virtue has transformed into social license: freedom from tyranny has mutated into freedom from obligation. In its more extreme from, as among the followers of Ayn Rand, it is a kind of juvenile revulsion from parental tutelage – indeed, 'paternalism' is one of the freedom advocates' expletives.

'Freedom' has a transcendental appeal in American politics. But for a self-regarding rational individualist, it really comes down to a matter of calculation: whether untrammelled self-seeking is worth having if the same license is available to others. The advantage depends on socio-economic standing: freedom from obligation is more valuable to the rich and powerful than to others, because they have more to sacrifice. In conclusion, people's preferences are interdependent, not autonomous. They are driven by reciprocity as much as selfishness, by the quest to do the right thing, and receive the approbation they deserve. That is the actual view of Adam Smith, and it is building up new support. It is well-founded in reality. 'Economic Freedom' and 'The Invisible Hand', each on their own, or joined together, do not provide an adequate warrant for selfishness.

III

The abstractions of ethics come to life in the recent record of health care in the United States. Some ill-health is unavoidable. It exposes everyone to suffering and ultimately to death. Ill-health is a state of dependence on the knowledge and goodwill of others. The entitlements of patients are affected by an enduring tension, between Mandeville's principle of 'me-first', and Adam Smith's 'impartial spectator', with all their antecedents and later developments.[51] Unlike visits to the Butcher and the Baker, the patient cannot be sure how well she is being treated. Her suffering is an urgent matter, while for the doctor, however compassionate, it is all in a day's work. The nurse and the doctor have vital knowledge which is too extensive to convey to the patient. When it comes to payment, the patient's predicament means that doctors can drive a hard bargain. Even a patient who is robustly self-centred, does not like to think that those who treat him are in it only for themselves. Nor would any healer wish to convey that impression. But the patient cannot rely entirely on compassion. He hopes that the doctor is also intellectually disciplined and morally robust, that she has a sense of duty to the patient and to scientific truth, that she was licensed by impartial assessors, and that the knowledge she uses has been validated by impartial experts.[52]

Even if the doctor cares but little for any particular patient, we trust that she is disciplined by the judgement of her peers, who in this context fill the role of the 'impartial spectator'. This norm of impartial sympathy is codified as a fiduciary duty, a duty of care, whose first principle is 'do no harm'. Obligations are spelled out in professional codes of practice, backed by the sanction of exclusion, and enforced by the state. These codes can be taken to formalise the norms that the impartial spectator would have us internalise. They restrict the room for discretion, and commit practitioners to the client's interest.[53]

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[51] Force, ***Self-Interest before Adam Smith.***
[52] The doctor is female and the patient male for clarity of exposition.
[53] Rayner, 'Integrity in Surgical Life'.

The ethical code of practice binds the profession to refrain from abusing its power. The commitment to do no harm has made it easier for society to grant medical doctors a monopoly of medical practice.[54] Another token of this deal is tax-exempt status for medical schools and teaching hospitals. In return for this power, the healing professions used to promise, implicitly, not to abuse it: 'The organizational culture of medicine used to be dominated by the ideal of professionalism and voluntarism, which softened the underlying acquisitive activity.'[55] The deal with the state assumes that both sides are acting in good faith. The provider takes responsibility for the treatment and for its consequences.

Market liberals do not believe in the good faith of either doctors or the state. Their solution to the problem of unequal power is to 'let the buyer beware' (***caveat emptor***). The duty of care is laid on the patient, with little regard for his ignorance of the relevant information. The standard assumption in market liberalism is that people are well-informed, and are at fault if not (in the extreme Chicago form, they know everything at no cost). The vendor has a duty only to himself. It is the credo of the strong. As for the others, let the buyer beware.

American anti-trust legislation began in the late 19th century in order to bring more fairness into market competition, as an aspect of the broader Progressive movement. But market advocates after the Second World War (a different group, and hostile to the historical Progressives) cared little about monopoly.[56] Chicago economists are averse to anti-trust.[57] As a rule, however, their partiality to market power does not extend to

[54] Arrow, 'Uncertainty and the Welfare Economics of Medical Care'.
[55] Starr, ***Social Transformation of American Medicine***, p. 448.
[56] Van Horn, 'Reinventing Monopoly and the Role of Corporations'; Bork, ***The Antitrust Paradox***.
[57] Pitofsky, ***How the Chicago School Overshot the*** Mark; White, 'The Growing Influence of Economics and Economists on Antitrust'. Henry Simons was the last major Chicago economist to advocate anti-trust.

workers.[58] The Chicago argument is that corporate monopolies, unlike unions, can be challenged by new entrants. The licensing monopoly of the medical profession has also attracted the ire of Chicago. Milton Friedman advocated free entry into medical practice, with the onus of diligence transferred to the patients.[59] These views gained currency with the rise of market liberal influence during the 1970s. In ***Goldfarb*** vs ***Virginia State Bar*** (1975), the United States Supreme Court handed down a judgment that the ethical codes of professional associations were not immune to anti-trust. The case concerned the legal profession, but doctors embraced it too, and their associations accordingly relaxed the anti-competitive clauses in their codes.[60] Fees were quick to follow: American doctors are the best paid in the world by far.[61] Competition was not enhanced: the medical professions continued to control education, certification, standards, and numbers. But the duty of care was relaxed. Pricing power was given to impersonal commercial entities, insurance companies that only acted, as Mandeville had advocated, in their own interest. In a market where prices are set by corporations, there is little room for obligation or a duty of care. At the point of contact with the patient, however, the unpriceability of human life kicks in, and provides an incentive for overtreatment. There was also a financial incentive for doctors and hospitals to treat expansively with little regard for cost. The insurance company's incentive was to maximise net revenue. Unlike the doctors, however, insurance providers retained their immunity from anti-trust, and many of them came to dominate their territories.[62] In

[58] Friedman, ***Capitalism and Freedom***, ch. 8.
[59] Friedman, ***Capitalism and Freedom***, ch. 9.
[60] Relman, 'What Market Values Are Doing to Medicine'; Relman, ***A Second Opinion: Rescuing America's Health Care*** , ch. 1.
[61] Laugesen and Glied, 'Higher Fees Paid to US Physicians Drive Higher Spending for Physician Services'.
[62] American Medical Association, ***Competition in Health Insurance***.

consequence, healthcare providers increasingly charged as much as the patient could bear, and often more than that.

IV

Increasingly, knowledge in healthcare is embodied in drugs and other medical technology. Doctors have to take drug value on trust, but the vendors have no other duty than to maximise their profits. Drug making is among the most profitable industries in the United States. By the end of the 1990s the ten Fortune 500 drug companies had profits about four times as high as the median corporation, and between 2006 and 2009 the industry was typically the second or third most profitable one in the USA, with profits at between 16 and 19 percent of revenues.[63] This was not the work of the invisible hand, but of monopoly patents. Drug prices are much higher in the United States, with its policy norm of 'free markets', than in the variously socialised medical systems of other countries. When the United States Senate created a Medicare drug benefit for seniors, it specified that the government would not use its buying power to negotiate prices. Such was the political heft of Big Pharma. In the recent Congressional debates on healthcare in the United States, the statements of more than a dozen lawmakers were ghost written, in whole or in part, by lobbyists working for Genentech, a large biotechnology company. One statement was prepared for Democrats and another for Republicans. The company, a subsidiary of the Swiss company Roche, estimated that forty-two house members used some of its talking points. Several different statements in the ***Congressional Record*** matched each other word for word. The boilerplate that appears in the ***Congressional Record*** even included some conversational touches, as if actually delivered on the congressional floor. A lobbyist close

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[63] Public Citizen's Congress Watch, ***2002 Drug Industry Profits***, fig. 5, p. ; CNN Money and ***Fortune***, Fortune 500, 'Top Industries: Most Profitable', 2006-2009. It was fifth in 2006.

to the company said ‘this happens all the time. There’s nothing nefarious about it.’ [64] One Senator, who has acted successfully to protect health-additive companies from scrutiny of general health claims (the sort made by patent medicines) has been richly rewarded with financial contributions. [65]

In the United States, drug companies deploy consumer advertising to nudge patients into asking for particular drugs, and also perhaps to reassure the doctors. But this reassurance is often misplaced. A top medical journal editor has written, ‘Caveat emptor may be a reasonable approach from many consumer products, but not for prescription drugs’.[66] Expensive prescription drugs are often little or no better than generic ones, or than over-the-counter remedies. The rheumatism painkiller Vioxx had few clear advantages over aspirin, but made profits for its producer. Evidence began to emerge that it raised the risk of stroke and heart disease. When the company became aware of those risks, it did not rush to disclose them, and fought to prevent the drug from being banned.[67]

The approval procedure administered by the Federal Drug Administration (FDA) in the United States is no longer slow and thorough, and provides only a flimsy defence for patients. Since the early 1990s, the FDA has been half-funded by drug company ‘user fees’.[68] It evaluates drugs partly on the basis of tests submitted to it by the producers. Experts with financial ties to the companies sit on drug approval boards, where it is not uncommon for them to be in the majority. They can look forward to consultancy and speaking fees. The trials are often poorly designed, and investigators frequently fail to

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64 Pear, ‘In House, Many Spoke With One Voice: Lobbyists’.
65 Lipton, ‘Support Is Mutual for Senator and Makers of Supplements’.
66 Angell, ‘Your Dangerous Drugstore’, p. 7.
67 Ibid.
68 Angell, ***Truth about the Drug Companies***, 208-11.

report their links with the industry.[69] The figures are dressed up to favour the drugs, and trials are often carried out by investigators with a financial interest in the outcome. Some of the tests are even fraudulent. The standard of efficacy required is low: merely better than placebo. Negative findings tend to be suppressed. The majority of new drugs are variations on old ones, and the industry produces a regular flow of products that are unsafe and ineffective.[70] The drug companies have teams of ghostwriters who write up the research publication under the names of academic investigators. A study found that 10.9 percent of articles in the ***New England Journal of Medicine*** were ghost written in this way, 7.9 percent of articles in the ***Journal of the American Medical Association***, and 7.6 percent in ***The Lancet***.[71] In psychiatry, enterprising doctors seek to define new disorders which are treatable by drugs. Ordinary social attributes, like shyness or sadness, increasingly become medicalized.[72] Richard Horton, editor of ***The Lancet***, has defended non-disclosure of conflict-of-interest, on grounds that it has become impossible to prevent. He preferred the term 'dual commitment'. This position was contested by the editor of the ***British Medical Journal*** .[73] Marcia Angell, for two decades the editor-in-chief of the top medical journal in the United States, ***The New England Journal of Medicine***, has written that 'It is simply no longer possible to believe much of the clinical research that is published, or to rely on the judgement of trusted physicians or authoritative medical guidelines. I take no pleasure in this conclusion, which I reached slowly and reluctantly over my two decades as an editor.'[74]

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[69] Angell, ***The Truth about the Drug Companies***.
[70] Light, ***The Risk of Prescription Drugs***; FDA, 'FDA Notifies Pharmaceutical Companies'.
[71] Wilson and Singer, 'Ghostwriting is Called Rife in Medical Journals'; Singer, 'Senator Moves to Stop Scientific Ghostwriting'.
[72] Healey, ***Antidepressant Era***; Lane, ***How Normal Behavior became an Illness***.
[73] Horton, 'Conflicts of Interest in Clinical Research'; Smith, 'Conflict of Interest'.
[74] Angell, 'Drug Companies and Doctors: a Story of Corruption'.

In response to public criticism, journals and medical schools are beginning to respond, but slowly: few universities impose a cap on how much a faculty member can be paid by those who make a product they are investigating.[75]

Top doctors get large kickbacks. Ordinary ones benefit too.[76] The companies lay out hospitality at symposia and conferences, often at distant and attractive locations.[77] ‘Marketing and administration’ is by far the largest cost of drug production. Salesmen press drugs and procedures aggressively, and push them for off-label prescription i.e. for purposes for which they are not tested. There is large divergence in levels of medical costs across United States, with areas in the South tending to prescribe, test, and treat more heavily than in other parts of the country, often at the expense of Medicare. Doctors prescribe tests from labs which they own. In the medical economy where every service is provided as a commodity, fraud is rife, and antifraud control is also outsourced to private contractors.[78] Fraudulent billings alone are estimated by the FBI to cost between three and ten percent of total health expenditures, or approximately 0.5-1.7 percent of national income. Healthcare is a “criminogenic” industry.[79]

The Smithian norms of sympathy, approbation, reciprocity, and virtue might have protected the integrity of medical treatment and of medical research, if they were not challenged so forcibly by the policy norm of ***caveat emptor***. At the point of delivery, healthcare is not a commodity trading impersonally, but is mediated by personal interaction.

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[75] Wilson, ‘A Tougher Conflict Policy at Harvard Medical School’.

[76] Kassirer, ***On the Take.***

[77] Propublica, ‘Dollars for Doctors’.

[78] Gawande, ‘The Cost Conundrum’; Dartmouth Atlas Working Group, ‘The Dartmouth Atlas of Healthcare’ ; Forden, ‘Why Medicare Can’t Catch the Fraudsters’; Leap, ***Phantom Billing, Fake Prescriptions, And the High Cost of Medicine***.

[79] Leap, ***Phantom Billing***, ix, 3, 11.

However, what matters is not compassion, but integrity – the impartial spectator's injunction to do the right thing. Medicine is a vast enterprise, in which everyone has to trust that knowledge is created, validated, and used impartially, and in the interests of the patient. If the authority of scientists and doctors can be purchased by interested parties, its quality is no longer secure. Caveat emptor applies. Opportunistic professionals are tempted to cash in the reputation for probity of which they are the temporary custodians. The word liquidation has two meanings: destruction, and converting an asset into money. Opportunistic doctors have been doing both: appropriating the authority built up by generations of scientists and doctors for their own gain, and leaving it much diminished in consequence. This ethic of opportunism is pervasive. Medical doctors are increasingly thinking like entrepreneurs, and qualifying as MBAs.[80]

In return for immediate gain, they sacrifice present and future patients, and undermine the work of more selfless colleagues. They can exploit a position of authority and knowledge to dismantle the safeguards of knowledge and authority, for their own short-term gain.

V

It is not only the individual who was placed at risk. For the national economy, the cost of health care in the United States has now risen to a level which threatens macroeconomic stability. Health care costs (at around 17% of GDP) are at least twice as high per head as in comparable countries overseas (figure 1). These expenditures are creating havoc in public expenditures, and dragging down employers, who provide most health insurance. And yet healthcare outcomes (on average) are the worst among the top seven countries (table 1).

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80 Freudnehim, 'Adjusting, More M.D.'s Add M.B.A.'.

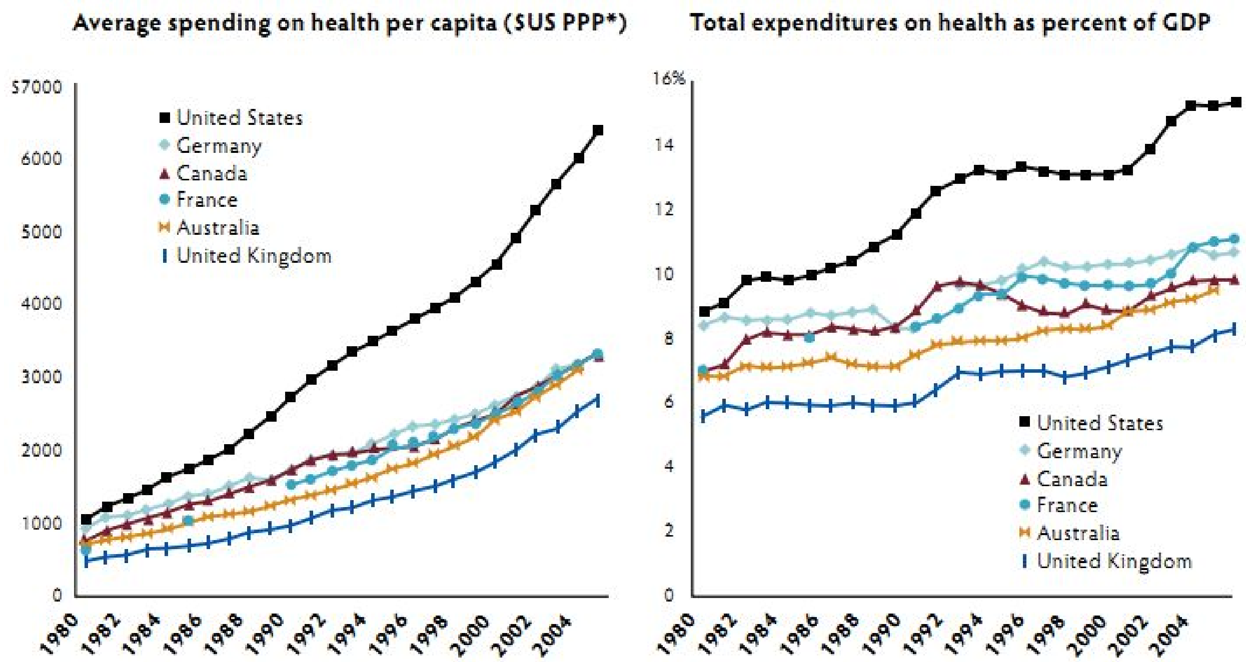

Figure 1. International Comparisons of Spending on Health, 1980-2005. ***Source:*** Commonwealth Fund, ***Why Not the Best? Results from the National Scorecard on U.S. Health System Performance, 2008***, (New York: Commonwealth Fund, 2008)., exhibit 3, p. 15.

Table 1. Overall Ranking of Healthcare Performance.

	AUS	CAN	GER	NETH	NZ	UK	US
OVERALL RANKING (2010)	3	6	4	1	5	2	7
Quality Care	4	7	5	2	1	3	6
Effective Care	2	7	6	3	5	1	4
Safe Care	6	5	3	1	4	2	7
Coordinated Care	4	5	7	2	1	3	6
Patient-Centred Care	2	5	3	6	1	7	4
Access	6.5	5	3	1	4	2	6.5
Cost-Related Problem	6	3.5	3.5	2	5	1	7
Timeliness of Care	6	7	2	1	3	4	5
Efficiency	2	6	5	3	4	1	7
Equity	4	5	3	1	6	2	7
Long, Healthy, Productive Lives	1	2	3	4	5	6	7
Health Expenditures/Capita, 2007	$3357	$3895	$3588	$3837	$2454	$2992	$7290
Rankings 1-2.33							
Rankings 2-34-4.66							
Rankings 4.67-7							

Source: Davis et al., ***Mirror, Mirror on the Wall: How the Performance of US Health Care System Compares Internationally, 2010 Update***, Exhibit ES-1, p. v.

A study of mortality reduction in seventeen countries over twenty-five years to 2005 found the United States to have the highest health expenditure per head, and the also the highest mortality rate. It ranked seventeenth in the ratio of expenditure to lives saved, and 11th in the rate of reduced deaths.[81]

Standards of treatment are good, but many people have little access to them. The proportion of uninsured during the last three decades has been typically higher than 15% of the population. It currently stands at almost 17%, or more than 50 million people.[82] Many more are under-insured. Medical insurers deny cover for millions with pre-existing conditions.[83] 45,000 excess deaths a year were recently attributed to the absence of medical

[81] Pritchard and Wallace, 'Comparing the USA, UK and 17 Western Countries'.
[82] U.S. Census Bureau, ***Income, Poverty, and Health Insurance Coverage in the United States: 2009***.
[83] Potter, 'Health Insurance Exec Speaks'.

insurance, comparable to c. 33,000 deaths on the roads.[84] For those without insurance, or with insufficient coverage, a major illness was an economic calamity. Personal bankruptcy in the United States has risen sharply in the last three decades. In 2001, about 1.5 million experienced bankruptcy, more, for example, than heart disease or divorce.[85] Medical costs were implicated in half to two-thirds of all cases of personal bankruptcy.[86] Some couples who would otherwise divorce chose to stay together to benefit from medical coverage, while others separated to protect a partner from catastrophic medical costs. But assets of divorced spouses can still be seized for medical expenses five years after the break .[87] Losing a job meant loss of health coverage, and people stayed in work they disliked.

The conflict between the care ethic and the market ethic is explicit in the efforts to make the underinsured pay for their treatment. The entitlement to unhindered emergency room attention is the US medical system's ultimate safety net; it is a statutory expression of the duty of care. In law, it is restricted to the relief of symptoms. But emergency room hospitals still demand payment for treatment, and sign up patients on high-interest credit cards in order to collect their fees. These obligations are pursued, and are ultimately sold at a discount to financial companies. 'If you go to a veterinarian, you have to pay, one health-care executive notes. Why should a hospital be different?'[88] Patients with assets can have them seized; those without, can lose their credit ratings, and their ability to borrow for a car or a house.[89] This is consistent with the norms of profit-making hospitals, but has caused some heart-searching among nonprofits. 'In a lucrative new form of fiscal alchemy…a

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84 Wilper et al., 'Health Insurance and Mortality in US Adults'.

85 Warren and Tyagi, ***Two-Income Trap***, pp. 80-5; Offer, ***Challenge of*** Affluence, pp. 293-4;

86 Himmelstein, 'Medical Bankruptcy in United States'.

87 Kristof, 'Until Medical Bills Do Us Part'; Smartmoney, 'Unhappily Ever after: the 'Nondivorce''.

88 Grow and Berner, 'Fresh Pain for the Uninsured'.

89 Harney, 'Debts that Unsettle the Score'.

growing number of hospitals, working with a range of financial companies, are squeezing revenue from patients with little or no health insurance.' Some non-profits were relaxed about charging patients a high rate of interest, but others were uneasy. One medical administrator in Memphis said, 'If we heal somebody medically, but we break them financially, have we really done what is in the best interest of the patient?'[90]

A software program in widespread use by hospitals ('Conifer') works out how to maximise cost extraction from indigent patients. "'One of our main values is to take care of the poor and vulnerable,' says Mary Jo Gregory, chief operating officer of Sisters of Charity of Leavenworth Health System, which operates 11 hospitals west of the Mississippi and is using Conifer software. 'How do you fulfil that role and still have a sustainable ministry? Our bad debt is high, and we're facing the same issues as everyone else in terms of collections.'"[91] The cases described are heart-breaking: pain and death galore. Profits are not as high in health insurance as they are in drug manufacturing. Instead, as in other industries, the surplus is appropriated by the managers.[92] Managers of non-profits also rake it in.[93] Physician-managed hospitals had higher outcome quality scores than those run by managers.[94]

The Obama healthcare reform has given priority to the ethical issue, the denial of medical care, while setting aside the economic one of unsustainably rising costs. The actual form of the Health Care Act is an unwieldy compromise. It has left intact the commercial profit-seeking framework of healthcare provision, protecting insurance company profits,

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[90] Grow and Berner, 'Fresh Pain for the Uninsured'.
[91] Olmos, 'Getting Patients to Pay before They Go Home', pp. 22-3.
[92] Strauss, 'Outgoing Aetna Chairman gets a $68.7 million Goodbye'.
[93] Buettner, 'Reaping Millions From Medicaid in Nonprofit Care for Disabled'.
[94] Goodall, 'Physician-leaders and Hospital Performance'.

and medical overtreatment. In order to achieve its ethical objective of extending healthcare to all, it has resorted to moderate form of compulsion, and has extended eligibility for subsidised programs. The Act only went through because it did nothing to threaten the revenues of insurance companies and health providers. It became the focus of political unrest, most notably by the so-called Tea Party movement. Inconsistently, these protesters oppose the reduction in Medicare benefits for the old, while objecting to the fiscal cost of extending coverage to other people. In its continued support for Medicare, the Tea Party movement embodies the tension between the 'me-first' self-interest ideology that is pervasive in United States, and the contrary intuition that care for the ill is both an obligation and entitlement.

It is revealing to discuss market efficiency in terms of these external costs of pain and death. In the UK, there is more than a decade's difference in life expectation between people at the two ends of socio-economic scale, more than at any time since 1921.[95] The prevalence of obesity is much higher in the cluster of English-speaking market liberal economies. Statistically, the most important driver appears to be the extent of economic insecurity, and that is affected by the risk of incurring high private medical costs.[96] Obesity is an important risk factor for disease and early death. Economic insecurity has risen sharply in United States during the last three decades.[97] There is a trade-off, then, between opportunity for some and pain and death for others. A market in healthcare is consistent with higher cost and worse outcomes. Even in theory, markets only work if participants are well-informed. That is not the case for health, and indeed, not the case for a great many

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[95] Thomas et al., 'Inequalities in Premature Mortality in Britain', p. c3639.
[96] Offer et al., 'Obesity under Affluence Varies by Welfare Regimes'.
[97] Hacker et al., ***Economic Security at Risk.***

other purchases, either because information is not readily available, or because it will only be revealed in the future.

For doctors, write bankers. Do bankers have a duty of care for anything except their private gain? Pain or death are not so directly at stake here, so the issue may not be so clear-cut. But when bankers bailed out by taxpayers, the pursuit of self-interest affects the access of others to necessities like housing, education, job security, pensions, and healthcare. From the point of view of high finance, its transactions are impersonal. But the marketing departments of retail banking strive to convey the impression of a caring relationship, and the purchase of financial products typically involves a face-to-face interview. The existence of face-to-face interaction, suggests that it would be appropriate to apply the norms of the impartial spectator to this type of interaction. Consequently, this aspect of retail banking makes it tempting for reformers to impose a duty of care on bankers, on pain of expulsion. Ed Miliband, current leader of the Labour Party has proposed a duty on bankers of this kind, explicitly modelled on the medical one.[98] But what the medical analogy really shows, is that neither an interpersonal relationship, nor a strict code of professional practice are sufficient. What is needed in this area of personal service for the duty of care to be effective, is an explicit rejection of the norm of ***caveat emptor***, of the license to exploit the client's ignorance. Even Milton Friedman stressed that an economic exchange is advantageous to both sides, only ***'provided the transaction is bi-laterally voluntary and informed***'.[99] If we want to follow Adam Smith, his teaching requires a modicum of virtue on the part of bankers, both individually and in their corporate capacity. The less-demanding 'economy

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98 'Ed Miliband Seeks Banker Disciplinary Code', BBC 11 Sept. 2011, http://www.bbc.co.uk/news/uk-politics-14869650. [accessed 11 Sept. 2011]

99 Friedman, ***Capitalism and Freedom***, p. 13 (italics in the original).

of regard' requires that whatever their real motives, bankers should be able to send an authentic signal, and not a fake one, that they respect their clients' interests, and do not feel entitled to cheat them. And to do that, they must genuinely place their clients' interests on a parity with their own.

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