

What has the state got to do with healthcare?

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Abstract

How should healthcare resources be allocated? Who should pay for it? What is the role of the state? There is little sign of agreement on these questions because differences are fundamental and often inter-disciplinary. Some writers, typically philosophers and ethicists, begin with a human right to health or healthcare, whilst some pursue equality of capability or procedural justice. Economists tend to look to maximise health yield from scarce resources. These analyses often rely heavily on state involvement and state funding. Many libertarians would reject these claims and seek to minimise the involvement of the state. They would argue that, so far as possible, individuals should be responsible for choosing and paying for the healthcare cover that they want. In this article I draw on thinking from several academic disciplines including: political philosophy, law, bioethics, economics and psychology, in order to consider what the minimum involvement of the state should be, from the perspective of an ethical libertarian seeking to minimise state involvement and maximise individual autonomy and responsibility. In the story that follows, set in a fictitious democracy, I argue that even for an ethical libertarian there is much for the state to do including:

- *Funding basic healthcare and many public health activities;*
- *Subsidising (or making the market cross-subsidise) insurance cover for more-than-basic-healthcare for certain people who would otherwise, through no fault of their own, have high-cost insurance premiums; and*
- *Creating law and policy on how decisions are made about health care entitlements, how procedural justice is provided, and devising a regulatory framework, governing providers of healthcare products and services.*

I. Beginning

“Great news, John. I have organised a big campaign speech entitled: ‘what has the state got to do with healthcare?’ The TV crews and national newspapers will all be there.”

“Good work, Barney.” The candidate paused. “And what is my policy on healthcare, Barney?”

“Our usual message John. It’s ‘let’s get government out of healthcare, because we know what’s best for ourselves and our families’. We want consumer-driven healthcare – we each buy the health insurance we want.¹ It’s a fashionable message, in keeping with our other policies, and our supporters will love it. You could add in a bit of nudge policy² to encourage people to do the sensible thing – but be careful we are not accused of telling people that government knows best.”

The candidate was smart enough to know that the market for healthcare was not as straightforward as the market for soap. “OK let me talk to a few people.”

But Barney knew what he was thinking. “Not those academics again John. If you must talk to them, I’m coming along”.

II. Middle

John welcomed them as they arrived: the economist, the political philosopher, the clinician, the bioethicist, and the historian. It was one thing to persuade those who already distrusted the state, and quite another to persuade other more thoughtful and sceptical voters. These academics made him think more deeply about difficult policy questions. He also consulted them because he cared about doing the right thing.

Candidate: Ladies, thank you for coming to meet me. We are a refreshingly pluralist democracy, full of people

1 Regina E Herzlinger, *Consumer-driven health care: Implications for providers, payers, and policy-makers* (Jossey-Bass 2004).

2 Cass R Sunstein and Richard H Thaler, ‘Libertarian Paternalism Is Not an Oxymoron’ 70 U Chicago L Rev 1159.

who express freely their differing opinions. But many people share my beliefs that government is much too big and that each of us is responsible for choosing and finding our own way in the world, and making a success of our own life.³ What counts as a good life for me might not be a good life for you. That adds to the richness and diversity of our society. We must respect others, let them make their choices – good and bad – and live with the results. To interfere with those freedoms more than we must is wrong; it is unethical. I recognise that we do not all have the same opportunities, and we may be able to do something to level the playing field, especially when people are young, but we cannot legislate away good and bad luck. In general, we should step back and respect the autonomy of individuals.

I recognise that others have alternative ethical convictions. They talk of rights to healthcare, and of equality of one thing or another. We might disagree, but I must listen to their arguments. I am a politician who looks to govern a pluralist democratic state, so I must look to govern those who agree with me and those who do not. I must lay out my thinking and let people judge me on my values and my policies. If they vote for me they must know what they are getting.

Few things matter more to people than their own health. So when it comes to healthcare I want people to make their own choices, according to their own priorities, and for the state to interfere as little as possible. But what is as little as possible? When it comes to healthcare, what are the minimum responsibilities of a state? I know that some libertarians see no role for the state in healthcare⁴, but I am open to persuasion. Let us leave what we can to the market, but where are we morally bound to intervene? I have brought you here today to ask you these questions.

³ Ronald Dworkin, *Is democracy possible here?: principles for a new political debate* (Princeton University Press 2006) 17.

⁴ Robert Nozick, *Anarchy, state, and utopia* (Basic Books 1974) 297.

So let us begin from the position that the state has got nothing to do with healthcare, and identify the minimum that it must do in any decent democratic society. What are the general responsibilities of the state?

Political philosopher: Well, of course there is much disagreement amongst scholars, especially about the characteristics and responsibilities of an ideal democracy,^{5 6 7} but almost all political philosophers and political scientists would agree that a government in a working democracy⁸ has a responsibility amongst other things to:

- Protect the safety of the people, an idea dating back to Thomas Hobbes;⁹
- Devise laws to clarify what is right and wrong, and interpret and apply that law, resolving disputes in the courts, as argued by John Locke;¹⁰
- Show equal concern for the lives of everyone, even though it is inevitable that laws and policies will affect different people differently;¹¹
- Listen to, respect, and be responsive to, the preferences of citizens,¹² although most would agree that that this does not mean that politicians must always follow the will of the majority.

Candidate: OK, but let's not forget John Stuart Mill who said that the only justification for the state interfering

5 Robert A Dahl, *On democracy* (Yale Univ Pr 2000).

6 Dworkin (n 3).

7 Benjamin R Barber, *Strong democracy: participatory politics for a new age* (University of California Press 1984).

8 Robert A Dahl, *A preface to democratic theory* (University of Chicago Press 1971) 63.

9 Thomas Hobbes, *Leviathan* (Second edn, Cambridge University Press 1996).

10 John Locke, *The second treatise of government: and, A letter concerning toleration* (Dover Pubns 2002) 57.

11 Dworkin 144 (n 3).

12 Robert A Dahl, *Polyarchy: participation and opposition*, vol 54 (Yale Univ Pr 1971) 1.

with our liberty is to prevent harm to others.¹³ Do the responsibilities you mention imply that the State has to get involved in the healthcare of individuals?

Political philosopher: When we think about the state's role of protecting safety, we tend to think about national defence and perhaps the police service. Yet many of us today face a greater threat from viruses, diseases and accidents.¹⁴ Often such threats have been deadly and come from foreign shores.¹⁵ How can the state protect our safety without addressing these threats?

Candidate: I agree we all want to be protected from danger. But I want people to take responsibility for their *own* health and their *own* lives. It is important that they insure themselves against threats to their health. Markets work - this we know. Let us leave the state out of this and let the market insure citizens against these threats.

Economist: Ideally, the best way to run the economy is to let individuals work, play, and consume what they want without restrictions. The interaction of supply and demand in the market naturally leads to equilibrium in which marginal benefits equal marginal costs. The prices that arise from the exchange in the market direct individuals to work in jobs where their skills provide the most value to society, to find efficient means of production, to limit the consumption of goods that are most scarce, and to save and invest for the future. Under ideal conditions, the entire economy functions without any central control or direction from the government. However, perfect market conditions...do not occur in the real world. Imperfect market conditions justify government intervention to protect the public's health. A "public good" is a good or service that does not lend itself to

13 John S Mill, 'On Liberty' in S Collini (ed), *On Liberty and Other Essays* (Cambridge University Press 1989).

14 C A Erin and J Harris, 'AIDS: ethics, justice, and social policy' 10 *Journal of applied philosophy* 165, 166.

15 Lincoln C Chen, Tim G Evans and Richard A Cash, 'Health as a global public good' 1 *Global Public Goods* 284.

market allocation because it costs nothing for an additional individual to enjoy its benefits, and it is generally difficult or impossible to exclude individuals from consuming it. The institutional and technical capacity to respond to disease outbreaks and prevention research are examples of public goods. A fundamental problem with public goods is the difficulty of motivating people to pay for them.¹⁶

Political philosopher: That suggests that in order to protect the safety of the people, the government has to intervene and pay for “public goods” like preventing and controlling epidemics. Otherwise viruses and diseases will develop and spread. These activities cannot be left to the market.

Barney: Why? Let us make it a criminal offence to fail to buy healthcare insurance to pay for this protection.

Political philosopher: That would hardly signal individual autonomy and small government. It would be the state coercing the individual to pay for something the state wants the citizen to have.

Barney: The state need not fund everyone. Those who can afford it can pay for themselves.

Economist: Means testing will mean that some will buy cover and some will not. Cover will not be universal. Public health works by protecting whole populations. Economists call some public health activities “public goods”, and some like vaccination against infectious disease, we call “merit goods” where there are “externalities” - benefits or costs to others from our economic choices. When I am vaccinated you benefit from my protection against disease. Externalities prevent markets from working efficiently where consumers or producers are not compensated for these effects. They can apply to individual healthcare and public health. For example, choosing to see the doctor when I am ill is likely to have a positive impact on other people, such as

16 Vilma G Carande-Kulis, Thomas E Getzen and Stephen B Thacker, ‘Public goods and externalities: a research agenda for public health economics’ 13 Journal of Public Health Management and Practice 227, 227.

the people I meet (who otherwise might become infected), my employer who needs me at work, and the economy as a whole. The knock-on benefits of my doctor's visit are not reflected in market prices, and as a result some people will be deterred from visiting the doctor even though the overall benefits justify a visit.

Candidate: I accept that the state has to fund, or at least subsidise, public health activities like vaccination where the population has to be protected so that each individual is protected. Advocates of consumer-driven healthcare like John Goodman also accept your arguments about externalities:

We don't want a parent to choose not to have her child vaccinated, or an at-risk expectant mother to avoid prenatal care, or a heart patient to eschew aspirin or beta-blockers. The reason: there is overwhelming evidence that the social benefits of the care exceed the social cost. Yet instances where we can be absolutely sure that we know which alternative is the right choice are rarer than one might suppose. At the other extreme, there are literally thousands of cases where only the patient can make the right choice.¹⁷

He goes on to argue that whether to spend an extra \$800 on a brand-name drug is a decision that can only be made by an individual. Drugs affect people differently, and people have different attitudes toward risk. Only when individuals spend their own money will they reveal their preferences. Therefore, one person cannot make an informed choice for another.

Lawyer: That of course ignores children and adults lacking the capacity to make decisions for themselves. The state must make law to say who can make decisions on their

17 John Goodman, 'Consumer-directed health care' (SSRN, 2006) 4 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=985572#PaperDownload> accessed 18 March 2012

behalf to protect their interests. Also, when two identical patients are offered two different levels of care, one of superior quality to the other, this could raise some difficult legal questions. For instance, is it acceptable to offer “sub-standard” care to one of the patients? Could that be construed as negligence?¹⁸

Clinician: Furthermore, the patient will not know in advance how the drug will affect her. And how well will she know her preferences for chemotherapy treatment if she has never experienced it before? When I buy many goods, like eggs for instance, I know my preferences but that does not hold true for much healthcare. Thus the individual patient is not especially well placed to judge either risk or her own preferences.

Economist: Research does suggest that human beings tend to be poor at making decisions that involve the assessment of risk,¹⁹ and indeed at making rational choices in general. Our choices are shaped by how problems are framed.

Candidate: Whatever the evidence of our failings as rational actors, you are not going to convince me that anyone other than me is best placed to make the important choices that affect my health and life. However, I accept that the State has a role to play where there are significant wider social benefits from healthcare. But other than that, the consumer buys insurance to protect her own health. Agreed?

Economist: There are difficulties with insurance. Economists know that many people would rather consume today than insure for tomorrow. Younger people, especially those on lower wages, are likely to allocate an insufficient

18 MA Hall, ‘Paying for What You Get and Getting What You Pay for: Legal Responses to Consumer-Driven Health Care’ 68 *Law & Contemp Probs* 159, 176.

19 Amos Tversky and Daniel Kahneman, ‘The framing of decisions and the psychology of choice’ 211 *Science* 453.

portion of their wages to future healthcare.²⁰ So they are likely to under-insure. That preference also leads people to consume too much food today, despite the negative impact that this will have on their future health and life expectancy.

Barney: This is where individuals have to take responsibility for their actions. We have options, we make choices, and we must live with the consequences. The state is not there to bail us out for our dumb choices.

Lawyer: But we can at least encourage people to avoid bad choices so that they won't need bailing out. Responsible governments around the world make laws and policies that create incentives for good behaviours, and disincentives for unhealthy or unsafe behaviours... like smoking.

Bioethicist: Yes, the state can be seen as a steward, with a responsibility to guide people towards good choices, and to reduce health inequalities.²¹

Barney: The state is not a shepherd guiding us through life!

Candidate: I accept there is a role even for a libertarian government to "nudge" people towards sensible choices,²² but not to tell people what to do.

Bioethicist: An ethical government has to do more than nudge people. It has to be there to bail out some people even when they have made bad choices.

Barney: Oh save me from bleeding heart liberals. The state is not a big cash cow to be milked dry by people who make dumb choices and get themselves in a fix.

Bioethicist: We know there will be people who will not buy healthcare insurance. Imagine Al... he is an alcoholic, homeless, and with very little money. Drunk one

20 Mark A Hall, *Reforming private health insurance* (American Enterprise Institute 1994) 66.

21 Nuffield Council on Bioethics, 'Public Health: ethical issues' (2007) 18 <<http://www.nuffieldbioethics.org/public-health>>.

22 Cass R Sunstein and Richard H Thaler, 'Libertarian paternalism' 93 *American Economic Rev* 175.

night he crosses the road in front of a hospital and is hit by a passing car. He requires basic medical care to clean his wounds and stem the profuse bleeding from his leg. With no money, and no insurance, should he be left to die?

Barney. Al should have stayed off the booze and off the streets. No one forced him to become an alcoholic. He must live or die with the consequences of his decisions.

Bioethicist. How can we know it was Al's fault that he became an alcoholic? Maybe he had a tendency in his genes. Maybe he was abused as a child and ran away from home. Maybe he failed to get a job after years of trying. Maybe he became depressed because his wife left him and took the kids. How are we in practice to sort out if Al is to blame? And even if he is to blame, are we all to stand by and watch him die? Could we ever call that ethical behaviour? Many would argue there is a moral rule of rescue²³ that means we cannot walk on by.

Political philosopher. Whether or not we accept the moral rule of rescue, we are compassionate beings. As Jean-Jacques Rousseau said, "it is this compassion that hurries us without reflection to the relief of those who are in distress" [Discourse on the Origin of Inequality, 76]. He maintained we are naturally sympathetic to others, and are upset by their suffering. Mencius, an early scholar from the Confucian tradition, argued that humans find suffering in others unbearable, are naturally benevolent, and that benevolence is the strongest motive to moral action.²⁴

Barney. So what? Why should we listen to some long-dead Frenchman and a prehistoric Chinese guy?

Clinician. Because modern science has proven Mencius and Rousseau to be right. Brain research tells us that when a human detects pain in another person, it triggers a response in the observer's brain in the same area of brain circuitry as that of the sufferer – a "compassionate" response.

23 John McKie and Jeffrey Richardson, 'The rule of rescue' 56 *Social Science & Medicine* 2407.

24 Din C Lau, *Mencius* (Chinese Univ Pr 2003) xviii.

Not only does an observer's brain "mirror" activity in that of the pain sufferer, but his or her empathy varies directly with pain intensity.²⁵

Candidate: I accept that people are compassionate. But why not leave it to individual compassion? Let each of us choose to give to charities that can help Al.

Barney: Yeah, leave the state out of it.

Political philosopher: We have said already we cannot reliably judge who is to blame for a person's ill health. If we left it to charity the state would be failing to protect not only Al's safety, but also the safety of children who suffer harm and disease through no fault of their own, and the disabled or genetically unfortunate who are burdened with chronic ill-health, disability or loss of life. Like Al, they too may have great need but may have little money. The duty to protect safety cannot be abdicated and left to individual philanthropy. Why should I abide by the coercive laws of the state when it does not protect me? Furthermore, the scale of the philanthropy you envisage would be considerable. Individual autonomy comes with responsibility, and that should not be shirked. The compassionate and generous should not have to pay for Al because the selfish would like to see him saved but would prefer to keep their money for themselves. Each must pay their fair share to the state, so the state can be fair.

Candidate: Remember that the state has already stepped in to protect Al's safety with traffic laws, speeding fines, road signs and so on. There are limits to the state's responsibilities. Nevertheless, I accept the state should fund these catastrophic cases. I am not persuaded that it is our moral duty, but I am persuaded that my voters are compassionate. But state funding should cover the very minimum necessary to prevent serious harm and protect human life, and only for those cases where basic care brings great benefit. In these cases our compassion is strong. A

25 Miiamaaria V Saarela and others, 'The compassionate brain: humans detect intensity of pain from another's face' 17 Cerebral Cortex 230.

clear line needs to be defined and drawn - the state can afford basic care for AI, but coercive state taxes should not be imposed in order to pay for AI to have expensive cancer drugs. Beyond basic care it is for each of us to decide how we spend our money. We might choose to spend less on houses and hobbies, so that we can spend more on healthcare. No one else can make those trade-offs for us. It would be wrong for the state to prevent some of us from choosing better healthcare.²⁶ Each of us chooses and pays for our own healthcare insurance cover.

Bioethicist: That sounds fair on libertarian grounds but pause a moment. You believe in equal opportunities for all - let each of us be given the chances and then make our own luck. So then what do you say to those who are dealt the poor cards: born to a deprived family with a poor diet, or with damaged genes, or with a chronic illness? That makes them unlucky enough to expect poor health, and their ability to earn may be diminished. Are we to add to that by making them pay double or triple the health insurance premiums of the rest of us? We said earlier that when making law and policy, the state has a responsibility to show equal concern for everyone. Equal concern must mean that the state makes the healthy subsidise the unhealthy.

Barney: The insurance companies can look after that if they want. It's not for the state to interfere.

Economist: Unless the state intervenes, the market will charge according to risk. So the unhealthy will pay handsomely. If an individual firm offered to cross-subsidise as you suggest a rational healthy consumer will simply move to another company with cheaper premiums. Furthermore, if obliged to cross-subsidise by law and fix prices in favour of one or more groups of consumers, the market will not function efficiently, because the market would not be setting prices according to cost.

²⁶ H Tristram Engelhardt, 'Health care reform: A study in moral malfeasance' 19 J Medicine and Philosophy 501.

Historian: These cross-subsidies may not be efficient economically, but they have been a common way that healthcare has been funded in the past. They have occurred not only because different people are blessed or burdened with different health characteristics, but because not everyone has the same ability to pay:

Under ancient Roman law and in Renaissance England, physicians, like barristers, were legally precluded from enforcing ordinary contracts for their fees because this was seen as inconsistent with their status as noble, learned professionals. Instead, physicians and barristers received voluntary honoraria and were expected to serve patients regardless of their ability to pay.²⁷

Barney: But this is not ancient Rome!

Candidate: We have already said that the state must provide funding to ensure that basic healthcare is accessible to all to protect their safety, as long as it is not too costly. I do not accept that the state has also to be concerned about ability to pay for insurance for healthcare that goes beyond that basic minimum. However, I do accept that there is an argument for subsidies for “more-than-basic” healthcare for those who inherit or are afflicted by serious health problems. I envisage two conditions... firstly, it must be absolutely clear that ill health is through no fault of their own. If they in any way caused their own ill health, for example by smoking or eating too much, then they must live with the consequences. Secondly, it normally should apply only to children, because adults can decide for themselves to buy insurance cover before they are struck down with illness or disability. But I accept the state might intervene in some cases, like say for those children born with a disability, either by providing direct subsidies to those affected, or by regulating the

²⁷ Hall, ‘Paying for What You Get and Getting What You Pay for: Legal Responses to Consumer-Driven Health Care’ 164.

insurance market to enable cross-subsidies. But that sounds complex. Can it be made to work?

Economist: Several European systems, including Dutch healthcare, operate with cross-subsidies. The consumers choose their healthcare insurer and insurance package, and consumers who have been assessed as high-risk, high-cost cases are subsidised from a risk equalization fund.²⁸ Furthermore, The Netherlands is considered to have one of the most successful healthcare systems.²⁹

Clinician: However, your distinction of people “at fault” and “not at fault” of causing their ill health, and of children and adults, will be very difficult to apply in practice. For example, is an adolescent who is brain damaged after falling from a tree “at fault”?

Candidate: I can see difficult policy decisions are required there, but they can be confronted. We have accepted that the state has to intervene to fund public health activities and basic healthcare for individuals, to subsidise (or make the market cross-subsidise) more-than-basic insurance cover for certain individuals who would otherwise, through no fault of their own, have high-cost insurance premiums. Is there anything else the state has to do?

Lawyer: It must make laws and policies. You may not agree that health or healthcare is a human right, or with the role of healthcare in securing equality of capability,^{30 31 32} or even that healthcare has a special moral significance

28 Gwyn Bevan and Wynand Van de Ven, ‘Choice of providers and mutual healthcare purchasers: can the English National Health Service learn from the Dutch reforms’ 5 *Health Economics, Policy and Law* 343.

29 Karen Davis and others, ‘Mirror, mirror on the wall: How the performance of the US health care system compares internationally: 2010 update’ (*Commonwealth Fund*, 2010) <<http://www.commonwealthfund.org/Publications/Fund-Reports/2010/Jun/Mirror-Mirror-Update.aspx?page=all>> accessed 28 March 2012.

30 Amartya Sen, ‘Why health equity?’ 11 *Health Economics* 659.

31 Martha C Nussbaum, *Women and human development: The capabilities approach*, vol 3 (Cambridge Univ Press 2001) 77.

32 Cécile Fabre and David Miller, ‘Justice and Culture: Rawls, Sen, Nussbaum and O’Neill’ 1 *Political Studies Rev* 4.

because it protects our equal right to opportunity.³³ Nonetheless, I am sure you accept that healthcare is a very important good – more important than motors and mowers and movies. We may die through lack of it. Who should get it and who should decide who gets it? Those are very important questions and because they may be matters of life and death, they are ones that the state cannot ignore. The state must make laws and policies to answer these difficult questions, or at least to explain how, and by whom, these questions are to be answered. For example, our discussion today suggests that we need to decide which public health activities should be funded by the state. Similarly, we have said that basic healthcare will be funded by the state – but how and by whom are decisions made about what constitutes “basic healthcare”? These are complex questions on which people will disagree depending on their values.³⁴ And if I am ill, who decides in my particular case whether some or all of my treatment fits within whatever has been defined as “basic healthcare”? As my life may depend on it, justice demands an appeals procedure. The state must provide, or regulate to stipulate who provides, for procedural justice.³⁵

Clinician: Yes, psychological research shows that procedural justice engenders trust and legitimacy, so that people are prepared to accept decisions as fair even when they go against them.³⁶

Barney: My head hurts. It was already starting to sound like socialised medicine. Now you are suggesting British death panels!³⁷

33 Norman Daniels and James E Sabin, *Setting Limits Fairly - Can we Learn to share Medical Resources?*, vol 1 (Second edn, OUP 2007) 14.

34 *ibid.*

35 *ibid.*

36 Tom R Tyler, ‘Psychological perspectives on legitimacy and legitimation’ 57 *Annual Review of Psychology* 375, 379.

37 Andy Barr, ‘Palin doubles down on ‘death panels’ (2009) <http://news.yahoo.com/s/politico/20090813/pl_politico/26078>.

Candidate: The lawyer is right. There are difficult choices to be made, and because they could be about life and death, the government must either make them, or stipulate who can make them. And individuals must be able to appeal against decisions.

Bioethicist: And what about the insurance companies who provide the more-than-basic healthcare cover? Are they the right people to decide what is covered and what is not? Whether a particular cancer drug is covered by my policy could also be the difference between my life and death.

Economist: The insurance companies will be able to respond to demand and consumers will be able to choose the insurance cover they want, based on what is included and excluded, and on price.

Lawyer: Nevertheless, the importance of these policies justifies regulation of the insurance companies too. How policy cover is decided, and what action I can take to challenge a decision that my treatment is outside the remit of my policy cover - these are questions of public concern. There are also other complex regulatory issues.³⁸

Clinician: Patients are often particularly vulnerable when seriously ill, open to exploitation by those who might profit from that vulnerability, and thus in need of protection.

Candidate: Yes, I accept there is a need for regulation of the insurance market too.

Lawyer: And then there are the healthcare providers and clinicians themselves - who is to regulate them? And what about medications and medical devices that are used to treat us?

Economist: There is an asymmetry of information at work here and so another type of market failure. The manufacturer knows a lot more than we can about the effectiveness and efficacy of their device or drug. We have relatively little information on which to judge the competence of a doctor and the value of the healthcare that they offer.

38 Timothy S Jost and Mark A Hall, 'Role of State Regulation in Consumer-Driven Health Care, The' 31 Am JL & Med 395.

What is more, because of their expertise and authority, the patient is vulnerable to being exploited.³⁹ For example, the doctor may sell the patient more services than she needs. Nevertheless, the capability and reliability of a doctor, a medical device, or a drug, to deliver a good outcome is of great importance to us as individuals – it could be the difference between life and death. Asymmetry of information is one important reason to regulate.⁴⁰

Candidate: An interesting explanation. Few would doubt the importance of regulating healthcare so that we can have competent, qualified clinicians and can trust that medications and medical devices will do us more good than harm. Either it should be self-regulation, overseen by government with the ground rules laid down in law, or it should be state regulation.

Bioethicist: You have shown a touching faith in the reliability of the market to provide healthcare. What happens to people if market mechanisms break down and we have no healthcare provided? How then could the state protect our safety?

Candidate: I know she has talked about market failure, but I am sure the economist would tell us there is sound theory and empirical evidence that demand for goods and services generates supply. But that is unnecessary because I recognise that in principle to protect the people, the government has a responsibility to ensure that healthcare services are made available. In the unlikely event that the markets were to fail, the government would have to step in, and do something to rectify the problem.

Let us finish here. I am sure there is more that could be said, but I think we have identified the main responsibilities of the state. The state has much to do. It should:

39 Robert A Berenson and Christine K Cassel, 'Consumer-driven health care may not be what patients need—caveat emptor' 301 JAMA: The Journal of the American Medical Association 321, 321.

40 *ibid.*

- Fund and ensure the provision of many activities necessary to protect public health;
- Ensure basic healthcare i.e. lower-cost care that protects safety - is accessible to all, with the state funding either everyone or just those with insufficient means to pay for themselves;
- Subsidise, or make the market cross-subsidise, insurance cover for more-than-basic-healthcare for certain people who would otherwise, through no fault of their own, have high-cost insurance premiums;
- Oversee and ensure that there is continuing provision of a wide range of healthcare;
- Create laws and policies which centre on:
 - how decisions about who is entitled to healthcare are made,
 - systems of procedural justice enabling, for example, appeals by those denied healthcare,
 - the regulatory framework (either self-regulation or state-regulation) governing insurance companies, healthcare professionals, medical devices, and medication.

Barney. John, that message is political suicide.

III. End

The crowd were raucous and rowdy; this was no tea party. People were chanting: “We hate government, we love John!” Many wore T-shirts declaring: “What has the government got to do with healthcare? Nothing!” A woman, presumably from the religious right, held up a sign proclaiming: “John stands firm against Johnnies!”

The candidate stood before his faithful crowd and began: “So...what has the State got to do with healthcare?” A huge roar came from his expectant audience, each one a believer in individual freedom and small government. “My answer is...” Another pause and another roar. “Quite a lot!”

The gasps were audible as shock spread across the faces of the crowd. Barney had his head in his hands. He was already thinking about his next job.

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