

On Law and Rights: Can the Center Hold?

Jane M. Orient, M.D.

[This article is from a talk presented at the 66th annual meeting of AAPS in Nashville, Tenn., Oct 1, 2009.]

It is my honor to address this group—the Americans who are going to take back medicine, and then take back our country. I'd like to welcome you and to share some philosophical reflections on our foundations, from the perspective of a recovering geometry teacher.

Since I have been called a “flat earther,” I have decided to make the best of it, and start there. Flat-earth theories included the Giant Tortoise Theory of Native Americans, and the Titan named Atlas. The common view is that Atlas held up the world, but actually, a Roman statue based on a Greek one shows him with the celestial sphere on his shoulders. These fanciful ideas were wrong, of course, and there was no evidence for them, but at least there was no evidence against them at the time, unlike with many fantastical modern ideas such as the superiority of the Single Payer.

These models left unanswered questions, such as what was the tortoise standing on, but they reflected some common-sense ideas. Things have a foundation, and if you blow up the foundation, or annoy the giant enough so that he finally shrugs, disaster will surely follow.

Today I can't help being haunted by a poem we had to read in English lit in college, before the Western-Civ-has-got-to-go crowd took over the university: in *The Second Coming*, William Butler Yeats writes that “the falcon cannot hear the falconer,” “things fall apart; the center cannot hold,” “the blood-dimmed tide is loosed,” and “the best lack all conviction, while the worst are full of passionate intensity.”

This poem was written in 1919, when Yeats could see the effects of destroying the old order in Europe.

When our colleagues say nothing could be worse than the status quo, the answer is, “Oh yes it can.” Obnoxious as people named Hapsburg, Hohenzollern, Romanov, or Louis might have been, were people really better off with the Nazis, the Bolsheviks, or, earlier, the incorruptible Robespierre, or Napoleon?

Now in the United States, we have had sappers undermining our foundations for decades, and now we have avowed revolutionaries close to the center of power. The Leader himself may say “reform,” but he also says “transformational change,” and the latter is what he really means: revolution.

What is our foundation—the source of the Law, which the mirror image of our rights? Do we need a revolution—or a reformation?

Marcia Sielaff, editorial editor of the now-defunct *Phoenix Gazette*, who published some of my columns—a Jewish lady—told me, “It all boils down to theology.” While we will not all agree about theology, I propose that we look for common ground.

Here are two laws proposed by Richard Maybury, who writes a financial newsletter called *Early Warning Report*. They are: (1) Do all you have agreed to do” and (2) “Do not encroach on other persons or their property.” These laws, he writes, are necessary for civilization—without them, there is what he calls Chaostan, which now encompasses a large part of the world. These are the foundation for contract law, tort law, and criminal law. Does anyone here find these unacceptable? Unnecessary?

To me, these laws look like an agnostic and abbreviated formulation of the second tablet of the Decalogue.

Maybury's laws, while necessary, are not sufficient. They beg the question: What is the source of the laws? What makes them authoritative? Can these natural (or divine) laws be superseded by evolving positive or man-made law? Or can they be radically transformed by the Leader's definition of personhood and property?

Is Reason, or Science, the foundation? Reason is clearly necessary. But is it sufficient? Ayn Rand laid claim to it—so did the Jacobins and Marxists. But geometry, like the Declaration of Independence, starts with self-evident truths. Reason, like Atlas, has to have something to stand on. Gödel proved this rigorously for number theory in his Incompleteness Theorem. If instead of relying on self-evident truths, we allow the Leader to make up the assumptions, might he also distinguish Aryan science from Jewish science?

Here are some other precepts for discussion:

“Prove all things; hold fast that which is good.” (1 Thess. 5:21) This is the basis for science. There are *no* scientific propositions exempt from critical scrutiny—prove *all* things; indeed there are no “scientific” *truths*; only a scientific *method* of seeking truth.

“Ye shall know the truth, and the truth shall make you free.” (John 8:32) This assumes the existence of external, objective, absolute Truth. Perhaps this is both necessary *and* sufficient. Can tyranny exist without lies?

“No man can serve two masters.” (Matthew 6:24) Can you serve, for example, payers and patients?

“Every good tree bears good fruit; but a bad tree bears bad fruit.” (Matthew 7:18) This is one formulation of my favorite method of geometric proof, the indirect method, or *reductio ad absurdum*. Make a bad assumption and show that it leads to a contradiction. We do a lot of that in “health care,” as in Massachusetts, Tennessee, and Maine, but we just disregard the results.

“Render unto Caesar the things that are Caesar's, and unto God the things that are God's.” (Mark 12:17)

There might be some discomfort here, but even an atheist has to agree that either everything belongs to Caesar, or it doesn't. Either natural individual rights exist—or they don't. The first tablet of the Decalogue concerns a higher authority. To maintain his grip on power, Caesar tries to undermine all potential competitors: the authority of the family, the sovereignty of the individual, or religious authority.

I assume that everybody here recognizes the source of these precepts, although present-day students in government schools might not have heard them; these days they might be too busy singing an ode to Obama to the tune of *The Battle Hymn of the Republic*.

Where does organized medicine stand on our foundations? To join the AMA in 1999, one had to sign a statement that one endorsed the Principles of Medical Ethics. Principle #3 stated: “A physician shall respect the law and also recognize a responsibility to seek changes in those requirements that are contrary to the best interest of the patient.”

It seemed to me that, like the new Physician Charter and the various substitutes for the Oath of Hippocrates, the AMA accepts the proposition that physicians are servants of the State. They may have a responsibility to try to change laws that are not in the best interest of their patients, but until the law changes, “it’s the law,” as Jerry Cruncher said in *A Tale of Two Cities*—even if the law is an ass, as Mr. Bumble said in Dickens’s *Oliver Twist*.

So after I got my recruitment letter and application form, I wrote to then President-Elect Stormy Johnson, reputedly one of the best friends of private medicine, to ask, “What does this mean?” What if the law requires me to do something unethical, such as harming a patient? Is there *ever* any circumstance in which a physician has the responsibility to disobey the law?

I never got a direct answer to that question.

To join the AMA now you have to endorse the whole complex code of medical ethics, which fills an entire book. The AMA has admitted that “in some cases, the law mandates unethical conduct. In general, when physicians believe a law is unjust, they should work to change the law. In exceptional circumstances of unjust laws, ethical responsibilities should supersede legal obligations.” These circumstances are said to be extremely rare. And what does “unjust” mean?—“disparate results”?

Results of the war to date: The AMA is pouring millions of dollars into politicians’ coffers, and medicine is losing.

Why? Here is an answer to the question of why Israel is losing, by Robert Aumann, a Nobel laureate economist, unfortunately far less popular than Paul Krugman. Aumann fled to New York with his parents 2 weeks before Kristallnacht. He founded the Center for the Study of Rationality at Hebrew University and the Game Theory Society. He developed a rigorous mathematical foundation for how to get beyond the predatory zero-sum games of socialism to the positive-sum games of the Golden Rule, in which the good fortune of one also benefits others. The game theory he developed explains why free-enterprise capitalism works.

Aumann spoke at a 2008 Toronto conference on “Israel at Sixty,” and took his text from the story of Jacob wrestling with the angel. This statement is from the question and answer period:

“Nothing is holy to us. Not the Golan Heights. Not Jerusalem. Not Tel Aviv. Nothing is holy to us. We do not have any red lines. Nothing at all. And because nothing is holy to us, we are going to be left with nothing if we continue this way.”¹

The world’s pre-eminent proponent of mathematical rationality concludes that the rational man has to take a stand, with religious fervor. As George Gilder summarized his view: “Immovable convictions are often termed religious. In some sense, they transcend reason and partake of the domain of faith. The rational man at some point has to make a religious stand. He has to make a commitment by declaring some entity as *holy*.”¹

So what do we do? We’re not for the status quo, which is an incremental slide into socialism. We need a reformation. We have examples: the Protestant Reformation, the Catholic Counter-reformation, and, I would argue, the United States of America. All the reformers could be branded as “fundamentalists”: they looked at the foundations and saw that they were good, but that men had gone astray. America’s Founding Fathers wanted to preserve and protect the rights of Englishmen, not trash English traditions—in stark contrast to the Jacobins in France. Sometimes reform came to a declaration of independence—Protestants declared independence from the Pope, and American Founders from England.

Unfortunately, the Reformation in Europe had a lot of casualties: one of the key insights of our Founding Fathers was to forbid laws “respecting an establishment of religion,” thereby keeping government troops and weapons out of religious disputes.

We do not and would not advocate an armed insurrection—which would be futile in any case. Now the government is armed with attack helicopters, F-16s, cruise missiles, and so on, and having seen a tank on East Fifth Street in Tucson, in front of my house, I see no reason to assume these would not be used against Americans.

Our methods must be peaceful, and it is critical for us to take the moral high ground. Complaining that we are underpaid, or just pointing out the obvious fact that free markets work, will not bring us to victory. Neither will union tactics—which require us to abandon the moral high ground. Even if we all “went on vacation” for a couple of days—and we won’t—what would we do next? Come back into the kennel as soon as they throw us a bone?

We should re-read Anna Scherzer’s 1993 talk on lessons from the Holocaust Museum. Jews in the ghetto were in denial about what was coming. They told themselves that they were needed. “Let us not be so smug,” Dr. Scherzer advised.² The elite really does not care about the type of medical care available to the masses, and there will be enough collaborators to care for the apparatchiks.

Gandhi urged noncooperation—as AAPS has since 1943. It is time for all ethical physicians to deprive the system of its presumed moral legitimacy. As things have developed incrementally, it has been easy to rationalize cooperation, and hard to draw a red line. The AMA, in voting down a call for nonparticipation in 1965,³ said that doctors should not abandon their patients. This was a hypocritical, self-serving misrepresentation of the call: which was to refuse the government money but still care for patients, accepting direct payment only and providing charity where needed.

In case you don’t have enough sins of your own, a Catholic examination of conscience provides a list of nine ways to be an accessory to another’s sin. These are: by counsel, by command, by consent, by concealment, by partaking, by provocation, by praise (or flattery), by silence, or by defense of the ill done. What about the sins of extorting money from some citizens for the benefit of others, or entering a contract with a third party such that the doctor has a conflict of interest? These also include ways to be an accessory to crime under the law, or to enable drug or alcohol—or government—dependency. Of course, accessories may be relatively innocent because of duress or necessity.

Can we accept money tainted by the Medicare Madoff scheme, without being an accessory to theft and fraud? I saw my red line in 1990, when doctors had to file the form asking for the money. Before that, I had only benefited from it indirectly.

It is legal to decline to participate in Medicare—at least at this time, although it is becoming more difficult. There may be worse trials of conscience ahead, say if doctors are required to become “death panels by proxy.”⁴

Here are two names to remember: Siphrah and Puah. These were the Hebrew midwives, memorialized in Exodus 1, who defied Pharaoh’s order to kill all male Hebrew newborns. (Pharaoh was by no means the last to try to preserve his authority by killing Jewish boys. And remember that Hitler didn’t start by killing them; first, he discriminated against Jewish professionals. Boys are not necessarily killed, but sometimes just gelded, these days using chemical or educational methods.)

Siphrah and Puah were clever, and apparently persuaded Pharaoh they had nothing to do with it; the Hebrew women delivered before they could get there. So Pharaoh ordered everybody to pitch male Jewish babies into the Nile. Moses’s mother disobeyed Pharaoh. There is a wonderful irony in the fact that the Decalogue was brought down from Mount Sinai by a man who wouldn’t have existed except for the courageous actions of female scofflaws, who obeyed a Law higher than that of Pharaoh.

I think that refusing to do evil is necessary, but not sufficient. We are already seeing a John Galt effect, as creative and productive effort is simply not occurring—people just don’t work to capacity, or they drain effort into self-preservation.⁵

We need more than that: we need an outpouring of effort into showing a better way: the right way to practice in a free-enterprise economy. There are lawful ways to do this now, and we must use and expand all lawful escape hatches from the socialist—“universal”—trap. It will be far more difficult under ObamaCare. In the past, we have heard from many members who are blazing the trail: Mark Schiller, G. Keith Smith, Smiley Thakur, George Watson, Michael J.A. Robb, Todd Coulter, N Bryan Smith, Jim Coy, Juliette Madrigal-Dersch, Lawrence Huntoon, Jordan Shlain, and others, and will hear from more during this meeting. Richard Amerling will tell us about his Physicians’ Declaration of Independence.⁶

We face an extremely powerful threat. The man in front of the teleprompter is only a small part of it. The men behind the teleprompter are far more important. Some have theories about who these might be: let’s just call them the Principalities and the Powers. There’s a new iron triangle: with the public-private partnership, a combination of private wealth and government guns at the base, and what amounts to a new establishment of religion, with the concentration of moral authority, often allied with the pretense of Science, at the apex. Remember, the Leader calls “health care reform” a “moral imperative.” It is not the oft-threatened “secular humanism”—there is nothing either secular or humanistic about sacrificing California farmers—and those who live on their product—to a fish. Or about singing hymns to a political leader.

Some say all is lost, but that belief is a sure prescription for defeat. Consider that the shrugging Atlases are depriving the elite of a lot of resources. And that the sleeping giant appears to be waking up. Our physicians were in the vanguard on September 10, 2009, when about 1,000 white-coated physicians assembled in the Upper Senate Park.⁷

We need to return to our Center, to our Foundations. We need to identify the red line. What is holy to you? The patient-physician

relationship? The right to live by your conscience? Patient confidentiality? The American principle from that old AMA pamphlet, “the voluntary way is the American way”? We each need to figure that out, and to live by our convictions.

I think we must have an exodus—a critical mass of physicians declining the third-party Kool-Aid. Until we do, a reformation is probably impossible. And unless we do, lives will be lost as physicians are all dependent on a bankrupt and corrupt system for their livelihood, and patients for life-saving care.

Escaping from the system is dangerous. What are the other options? Trying to insinuate ourselves into the American equivalent of a Judenrat, with the intention of doing as much good as we can? Resigning ourselves to a life of making bricks without straw?

As Cyrano de Bergerac asked, “Shall I eat a toad for breakfast every morning? No thank you.”

I’d like to close by quoting Lord Christopher Monckton, who thrashed Al Gore in absentia at the Heartland International Conference on Climate Change in New York last March, because his closing remarks have particular applicability to how physicians ought to behave:

Monckton said: “There is no incompatibility between science and religion, as long as religion does not attempt to usurp the realm of science, and as long as science does not become a religion. So I hope this scientific conference will forgive a Christian if, in a Christian country founded by Christians, he does his duty as the valedictorian by sending you away from this great gathering with a blessing—a blessing that has been spoken in the stone-built village churches of England for longer than anyone can remember:

“Go forth into the world in peace;

“Be of good courage

“Hold fast to that which is good;

“Render to no man evil for evil;

“Strengthen the faint-hearted;

“Support the weak;

“Help the afflicted;

“Honour all men;

“Love and serve the Lord,

“Rejoicing in the power of the Holy Ghost.”⁸

Jane M. Orient, M.D., is an internist practicing in Tucson, Ariz., who serves as executive director of AAPS. Contact: jorient@mindspring.com.

REFERENCES

- 1 Gilder G. *The Israel Test*. Richard Vigilante Books; 2009.
- 2 Scherzer A. Medical reform and the events leading to the Holocaust. Presented at AAPS Annual Meeting, San Antonio, Tex.; 1993. Available at: www.aaponline.org/brochures/holoas.htm. Accessed Sep 28, 2009.
- 3 Annis E, Orient JM. Medicare and the destruction of freedom in medicine: recollections of Dr. Edward Annis. *J Am Phys Surg* 2008;14:117-119.
- 4 *The Washington Times*. Editorial: Death panels by proxy: Baucus bill pressures doctors to stop treatment. *Washington Times*, Sep 25, 2009.
- 5 Robinson AB. The John Galt effect. *J Am Phys Surg* 2009;14:25.
- 6 Amerling R. Physicians’ Declaration of Independence. Available at: www.aaponline.org/medicare/doi.htm. Accessed Oct 9, 2009.
- 7 Physicians stand together. *AAPS News*, October 2009, p 1.
- 8 Monckton C. Great is truth, and mighty above all things. Presented at Heartland Institute 2008 International Conference on Climate Change, New York, N.Y.; Mar 12, 2009. Available at: www.heartland.org. Accessed Oct 9, 2009.