

An Evolutionary Law and Economics Perspective on Chiropractic

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The efficiency of the health care system depends critically on the underlying legal institutions. An aim of law and economics, a subdiscipline between economics and jurisprudence, is to inquire into the capacity of prevailing and envisioned legal institutions to advance social efficiency. In one extreme, the government is limited to enact and enforce the rules of the free market system. The purpose of this paper is to point out the unique quality of free market health care in providing favourable conditions for dynamic efficiency. The paper draws on evolutionary health economics, and it views society as an open-ended process of discovery whose results are largely unforeseeable or even complete surprises.

Efficiency in economics is defined as an imaginary ideal state where no more opportunities exist for changes in contracts and other relationships that at least one party desires and no one opposes. A fundamental method of aspiring toward efficiency is to design the law expediently. Since the law is common to all and constitutes as it were a social contract, the approval of all is at least in principle needed.

The efficiency of a health care system requires not only that full use is made of the already known cures and other means to attain given human ends. Additionally and in the long run much more importantly, conditions must prevail for novel and possibly entirely unexpected opportunities for efficiency to emerge [1]. For example, chiropractors are in a

truly efficient health care system in a position to continually improve their techniques of treatment, invent new ones and otherwise develop their skills into fresh directions.

The legal system of the free market is routinely used in economics as a frame of reference, or an ideal type, that brings rigour into the welfare analysis of alternative institutions. In the market system, all resources are privately owned, freedom of contract prevails, and strict liability for damages is applied in torts. The free market stands out among all other social systems on account of the prominence of its rules. It seems obvious and natural, for example, that a chiropractor rather than any one else is entitled to the profit that she earns by hitting on a new pattern of cooperation between physiotherapists and orthopaedists. There are several reasons why the free market provides exceedingly favourable conditions for dynamic efficiency.

First, a government constrained to enforce the rules of the market can plead to its limited power while trying to repel bribing, lobbying and other rent seeking efforts of political interest groups. The visibility of deviations from the natural rules of the market and the resistance of the people to interferences with their natural rights further reinforce the commitment of the government not to overstep the line.

Second, decisions to use property, along with its ownership, are decentralized in the free market. Compared to a state-run system, more varied use can then be made of the knowledge dispersed in the possession of the people. For example, a consumer has in the market a right to take out a health insurance policy that covers chiropractic care without any regard to, or even knowledge of, the decisions of others. Correspondingly, private insurance companies have a right, and high-powered incentives as well, to offer standard terms in line with the preferences of their customers.

Third and related, people are in the free market at liberty to use their private property for experimenting with novel lines of action. All can try out the strength of their ideas within their respective private domains taking no notice at all of the current opinion of the others. For example, a chiropractor can author and publish a textbook on a new approach to treating neurobiomechanical disorders even though no one else yet realizes its value. The government paves the way for such bold experimentations by doing nothing more than protecting the domain of each against wrongful invasion.

The dynamic performance of a health care system is different when the government is permitted to intervene in the workings of the market system. An example of legislation unambiguously in violation of the rules of the market is national health insurance financed by taxation. There are valid economic arguments for such a system, coming from the failures of the market to meet public approval. In a complete comparative appraisal, evolutionary considerations have to be carefully borne in mind. The effects of national health insurance on the dynamic efficiency of chiropractic care are examined in the following by using Finland as a case.

In Finland, the law about health care professionals, come into effect in 1994, confers chiropractors with a degree from an accredited university the right to use a specific professional title *koulutettu kiiropraktikko* (trained chiropractor). The law enjoins the National Authority for Medicolegal Affairs to maintain a register of trained chiropractors and also to control their activities. Freedom of trade and entry into the occupation are not as such restricted. However, since the National Health Insurance does not as yet cover the costs of chiropractic care, the government in fact introduces a distortion into the market for private health care [2]. There are sound reasons for extending the coverage to include primary health care by trained chiropractors.

When an entrepreneurial chiropractor discovers an opportunity for efficiency in the free market, she can work toward utilizing it by using her property without asking any one else's permission. The case is very different in a society where the government is let to spend tax income on the National Health Insurance and exercise discretionary power to decide on its coverage. In order to bring about a change in the law, an individual chiropractor, a union of them or another interest group ought, first, to persuade the government of the need for the change and, then, to overcome the resistance of other interests groups fearing a loss from the change.

A means to convince the government of the benefits of a new treatment is to gather evidence of its effectiveness and cost-effectiveness through randomized controlled trials. The procedures of evidence-based medicine are a necessary part in the accumulation of scientific knowledge, and they are an indispensable precaution against misconduct in public health care. At the same time, the procedures are biased against innovation. In order to be truly controlled, the trials have to be carefully designed in advance so as to

preclude improvising, dissenting and other conduct that might bring unwanted variation. The conservative bias is particularly strong in the kind of manual treatments used in chiropractic where case-by-case judgment is important and clear-cut clinical guidelines are hard to work out. Furthermore, at its very best, scientific evidence drags behind actual development and may suggest as a novelty things that in clinical practice have been for long a matter of course.

A change in the law to the benefit of society at large is difficult to bring about in particular when the costs of the change are concentrated to a small organized group and, in contrast, the benefits are scattered throughout the entire society. Chiropractic is a case in point. An organized interest group, such as the medical profession, may grasp the opportunity and resort to a variety of protective tactics to prevent the expansion of rival care [3]. In the medical literature, one trick is to reject submissions from chiropractic sources [4]. Another is to publish selectively on the available evidence on the risks of chiropractic adjustment, or to misrepresent as chiropractors persons, such as one's wife, a barber or a physiotherapist, who have caused a complication by manipulation [5]. Warnings of risks may have an inordinate effect because of the availability anomaly observed in the psychology of the human mind [6].

Due to the path dependency of social evolution, the adverse consequences of present-day legal institutions on the efficiency of health care may be of long standing. When trained chiropractors are not in a position to treat their patients in the best possible way owing to lacking refunds in the National Health Insurance, the results of treatments remain less than fully satisfactory. No compelling reasons seem then to exist for a change in the reimbursement policy, the distortion in the market for health care market persists, and the vicious circle goes on.

In the real world of uncertainty and evolution, the details of an efficient health care system are not known in advance, and they cannot be attained through particularised planning. The only means toward an outcome that will be appreciated only after discovery is to apply abstract rules of conduct that are known from past experience to produce good results on average or in most cases. The rules of the free market are a prime example of conditions where revolutionary solutions to health disorders have a chance to

become gradually adopted and eventually added to the growth of established knowledge. The success of chiropractic is a vivid testimony of the power of spontaneous evolution.

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