TAXATION AS METAPHOR

The Hospital And Public Responsibility

BY EMILY FRIEDMAN

As the debate over the tax status of voluntary hospitals becomes more acrimonious, one senses an undercurrent of resentment on the part of many hospitals. They do not seem to comprehend—or *want* to comprehend—the underlying issues involved.

For most hospital executives and trustees, the issue is simple: Because they are hospitals, they should not have to pay taxes. They believe this firmly, and they do not understand why so many local and state governments and even some members of Congress and federal officials do not believe it—especially when they *used to* believe it. Most hospitals see the proliferating attacks on their tax exemptions as cynical and unwarranted.

It seems that some critically important aspects of the debate are not being discussed. Four of these issues, in particular, warrant attention.

Governmental Cynicism

Certainly some cynicism on the part of government is involved. In some cases, questioning hospitals' tax exemptions would seem to be nothing more than an attempt to find new revenues without the appearance of raising taxes.

After all, this is not exactly a period of spellbindingly courageous political leadership, and the terror of being associated with a tax hike has led many politicians to seek other "revenue enhancements" that are more ingenious than they are honest.

Ms. Friedman is a health policy analyst in Chicago.

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Summary In the debate over the tax status of voluntary hospitals, most hospital executives and trustees do not seem to comprehend—or *want* to comprehend—the underlying issues.

First, the terror of being associated with a tax hike has led many politicians to seek other "revenue enhancements" that are more ingenious than they are honest. On the other hand, many of these governments have legitimate financial problems and are seeking new sources of revenue.

A second, related issue is uncertainty over what should be done about the uninsured and Medicaid populations. In the absence of an acceptable solution, we will continue to provide direct public support to public hospitals and indirect public support to private providers—including charitable tax exemptions.

The third underlying issue is hospitals' curiously narrow view of their private-sector status. Most of the functions hospitals provide are not only publicly funded; they are, in fact, public functions.

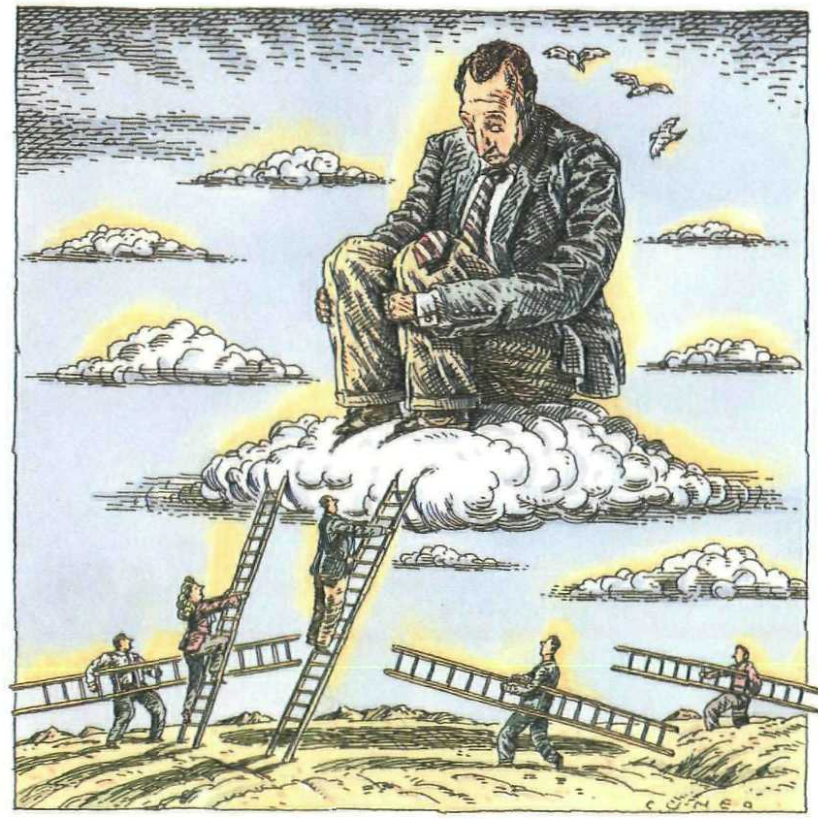
Finally, hospitals believe they are inherently moral organizations because they provide an inherently moral service. But hospitals grew to their present role in society almost by accident; their services are neither unique nor ethically superior. It is in *how* hospitals provide care that their morality can be measured, not in the fact that they provide some kind of care to somebody.

An honest appraisal of these issues will help each hospital answer the basic question: As an *ethical and moral* matter, should this organization be paying taxes? But is this fight really about taxes? I believe society and government are using taxation as a metaphor for trust in hospitals.

tions was in Utah. That state's birth rate is about twice the national average, and it needs a strong flow of revenue to keep up with the demand for schools and education funding. Yet much of Utah is owned by some government or other (local, state, or federal) or by a powerful church. It was inevitable that the state would eventually cast longing eyes at the millions of tax dollars not being paid by not-for-profit hospitals. The same situation prevailed at another battle site, Burlington, VT, where a significant portion of the property in the city is tax exempt.

Because churches and governments in the United States will probably never be taxed, the next-largest untaxed landholders in town present a tempting target for increasingly desperate political leaders who do not have the money to fund the services being demanded of them. Perhaps it *is* cynical of them to wrap a search for money in the cloak of promoting charitable intent; but in politics, unfortunately, cynicism often comes with the territory.

It should be noted, however, that not every government entity seeking to tax hospitals is in deficit. As the county administrator of Lehigh County, PA, John Kachmar, said when this issue was raised in connection with his attempts to tax St. Luke's Hospital in Bethlehem: "We don't need the money; we operate in the black. Rather, we were raising the question: Is the hospital's commitment to the community being fulfilled?"



John Cuneo

Dilemma of the Uninsured

A second, related issue is another profound dilemma confronting the public sector: what to do about the uninsured and Medicaid populations. Despite a high-profile national debate on the issue, we are nowhere near finding a solution that would have the support of most, let alone all, of the major stakeholders. In the absence of such a solution, the most powerful force is inertia: Let's do it the way we have always done it.

And how we have always done it is to provide some direct public support, largely through the creation and retention of public hospitals (however underfunded), and some indirect public support, through tax monies expended on subsidies, general assistance programs, and other activities—including charitable tax exemptions—designed to purchase care for the uninsured from private providers. As part of the deal, government looks the other way as those providers cross-subsidize the cost of such services by increasing fees charged to others.

This may not be the ideal public-private partnership, but it is how we have done things for a long time. And until we come up with a better means of doing it, we will have a hard time getting government to concede that these time-honored practices are not working well (if at all) anymore. It is not that governments really *believe* they are working: The waves of declining health status, patient dumping, inner-city and rural hospital closings, and decreased philanthropy for indigent care are evidence to the contrary. It is, rather, that governments do not know what to put in the place of these failing arrangements. As Eli Ginzberg noted in a recent article, "People must rethink the potential and limitations of their earlier long-term reliance on philanthropy and nonprofit institutions to continue to play lead roles in the restructuring of the nation's health care system."[1]

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Private Sector's "Public-ness"

The third underlying issue is voluntary hospitals' curiously narrow view of their private-sector status. They see themselves as utterly private and often go to great lengths to distinguish themselves from their public brethren. The situation is not that simple. As Rosemary Stevens observed in

her classic analysis of this belief, "Voluntary hospitals present themselves as part of a 'private sector' which is clearly differentiated from a 'public sector,' as if these distinctions had always been well understood."[2]

The fact is, as she continues, "The history of hospitals shows a long concern about the 'public-ness' of private charitable institutions." Indeed, she adds, for most of the nineteenth century, "if charitable care was seen as a legitimate or necessary public function, it remained a public function, whether offered in a governmental or a private facility. . . . As a result, the word 'public' . . . meant *for* the public rather than under governmental ownership or control. . . . Assumed as 'public' were many hospitals we would now call 'private.'. . . The term 'public' was both independent of [governmental] aid and a rationale for its provision."

Contemporary voluntary hospitals have tried to dispense with this idea, and little wonder. Americans are not noted for their affection for things public and governmental, and the notion that private-is-better is embedded in our culture. However, it is questionable whether society at large, and governments in particular, are as convinced as hospitals are that their "public-ness" does not exist.

For one thing, most private hospitals depend on public funds. In 1989, 53.5 percent of all reimbursement to hospitals was provided by federal, state, or local government.[3] (This is in addition to the $8 billion in taxes that hospitals do not pay and the taxes that most policyholders or employers do not pay on the more than $200 billion in private health insurance premiums paid in this country every year.)

Given this public largesse, it can be argued that *all* hospitals are public hospitals, and thus all are, or should be, subject to the same scrutiny and demands for accountability as government hospitals. I am not necessarily arguing that this should be the case; but hospitals' peculiar inability to recognize that they are largely publicly funded has led them to behave in a cavalier fashion toward government and sometimes to bite the hand that feeds them.

It can be argued more easily that the functions hospitals provide are not only publicly funded, but are, in fact, public functions. Hospital care is a necessity, perceived by society to be a public good. The provision and financing of hospital care is immeasurably aided by the lack of taxation that characterizes it and the public dollars flowing into it. A general assumption is that the hospital is a community institution—hence the use by the Internal Revenue Service of a tax-exemption standard couched in terms of "community benefit."

Most other such services are based in the public sector. Police services, fire protection, streets and sanitation, national defense, preservation and protection of the water supply—most of these long ago became the province of government. Indeed, public hospitals were here long before the rise of the private hospital.[4]

In fact, voluntary healthcare institutions are unusual in that what is widely seen as a public function is vested in these private organizations. They would do well, therefore, to avoid being too arrogant about their "private" status, which is not all that private. And it would behoove them to remember that their "public-ness" brings with it not only particular privileges, but also specific responsibilities.

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Hospitals' Inherent Morality

The fourth issue flows from the third: Hospitals believe they are inherently moral organizations because they provide an inherently moral service. As a result, this line of thinking goes, hospitals are charities, and worthy of tax exemption, solely because they provide healthcare. No other standard is necessary to demonstrate their high level of morality.

Although this position is undoubtedly of great comfort to hospitals, it owes its existence more to historical artifact than to any reliable philosophical or ethical underpinnings. As historian Charles Rosenberg has observed:

> To most observers, the 20th century hospital seems an inevitable, if perhaps imperfect, institution, one that grew unavoidably out of the interaction between social necessity and an emerging technical capacity. . . .
>
> Its history reflects a mixture of policy and drift, of change that grew out of the complex interaction among technical innovation, social attitudes, demographic and economic realities, and, finally, the crystallizing aspirations and values of an increasingly self-conscious medical profession. The hospital's functions and boundaries were negotiated in the past and are being renegotiated today; its history reflects choices not made, as well as those pursued.[5]

That does not sound as though Moses came down from the mountain carrying a blueprint for the American hospital as an inherently moral

force. Rather, the hospital grew into its present role in society almost by accident.

Even within the community of religious hospitals, we tend to forget that hospitals began as creatures of the churches; the fact that in some Western cultures, until recently, nurses were referred to as "sister" is mute evidence of the religious substrate that underlay much hospital development. Because of that history, hospitals' "special place in society" is as much the legacy of their once-close relationship with religion as of any endemically moral characteristics of the institutions themselves.

Nor can hospitals claim they are inherently moral because they provide a service that is unique and ethically superior. Healthcare is indeed different from many other services; but it is not all that different from, say, fire protection services—which are also publicly funded, utterly necessary, lifesaving, and needed in emergencies that cannot be anticipated.

Several years ago, the healthcare sector went off on a tangent trying to define healthcare as a *commodity or product* distinct from other commodities and products. That is easily done, but distinguishing it from other necessary social services is not so easy.

Thus it is difficult to build the case that hospital care is, in and of itself, a moral good. Saving lives may be a moral good, but hospitals have been known to take lives through poor care, malpractice, or refusal to accept patients in danger of dying. Healing the sick may be a moral good, but hospitals also produce nosocomial infections. Providing necessary and appropriate care may be a moral good, but providing unnecessary, inappropriate care is not, and hospitals do that as well. And, frankly, it is difficult to make the case that providing liposuction to aging yuppies represents any kind of high moral behavior.

I would argue that it is in *how* hospitals provide care (which includes to *whom* they choose to provide it) that their morality can be measured, not in the fact that they provide some kind of care to somebody. Although the provision of charitable care to the medically indigent may be one measure of hospital morality (and is what the fuss is all about), it is not necessarily the only one. But *some* distinction among hospitals, recognizing that some are more socially responsible than others, is entirely appropriate; nothing is inherently morally superior about healthcare providers that makes them all equally deserving.

Hospitals will have a lot of trouble accepting this. But the fact is that fewer and fewer people love hospitals to the degree that hospitals love themselves. As David Seay and Bruce Vladeck have observed, "A degree of self-satisfaction and self-righteousness is always a danger for successful institutions, and is perhaps an occupational hazard in the nonprofit world."[6] As a result, they suggest, hospitals imbued with this attitude "have not been extremely effective, in either practical or intellectual terms, in responding to attacks against them." In other words, if hospitals think they are above the law, and no one else does, then they have a problem.

Although hospitals have played and can still play a moral role in society, our assumption of their morality is what society has ceded to hospitals—out of history, hope, faith, and fear—and is not rooted in the hospitals themselves.

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An Honest Appraisal

These four issues—governments' legitimate need for revenue, policy paralysis on the issue of the uninsured, the public element in "private" hospital status, and the myth that hospitals are moral simply because they exist—are all feeding some governments' desire to tax some hospitals.

Each issue can and should be considered and addressed by hospitals, whether they are in danger of being taxed or not. An honest appraisal by each hospital of where it stands in relation to these questions will go far toward answering the basic question: As an *ethical and moral* matter, should this organization be paying taxes? In some cases, the answer will be no; in others, the answer will be, or should be, yes. What a hospital that comes to the latter conclusion should do in response to that discovery is an interesting question in itself.

But another question must be answered: Is this fight really about taxes? In view of the issues discussed here, I am not sure it is. I believe that society and its representatives in government are using taxation as a metaphor for trust in hospitals. It is emblematic of the honor system on which hospitals were placed long ago, and the fact that it is being challenged is emblematic of the fact that society fears hospitals have not held up their end of the bargain.

Rosemary Stevens ends her history of hospitals in the twentieth century by observing, "It has proved impossible—even after a decade of 'competition'—to lay [to rest] the ghosts of social obligation and moral virtue that cling to the powerful American ideals of voluntarism, charity, and community. American hospitals have embodied pow-

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erful social ideals in the past. They still do."[7] She concludes that although hospitals have often behaved selfishly, "they are still, to some extent, charities in the early twentieth-century sense: institutions through which the moral values of American society are expressed."

That is what the tax battle is really about: whether hospitals are still the repositories of the values society likes to think it holds. It is a difficult role for hospitals, because at times society professes values it does not hold, or fails to honor values it has enunciated for itself. So if hospitals are an honest mirror of society, at times the reflection will be an image society does not want to see.

Therefore society holds hospitals to a higher standard than most institutions. And, at times, it will demand that hospitals be better than society is, and that they honor values that society fails to honor. This may not be fair, but it is an old tradition. Tax exemptions are simply a reflection of this much deeper agreement between society and the hospital.

After the Medical Center Hospital of Vermont won its tax case against the city of Burlington, hospital president James Taylor sent a note to a friend that read, "We won the case. Now we have to see what we can do to help the city of Burlington." Within that recognition that the city had a legitimate problem, and that the hospital had a responsibility to help, lay much of the reason the hospital won its case: Taylor knew what the real issues were. He delineated them in an interview:

> More important than favorable tax treatment is the nature of the institution and its reason for being. An organization can be charitable and not-for-profit, even if it pays taxes. It's social policy to grant tax exemptions; but social policy can change. And I think it may—unless we do a much better job of telling our story, and unless that story is as convincing to the public as it was 100 years ago, when many of these exemptions were granted. But even if social policy changes, it would be detrimental to American society and health care if we relinquish our charitable purpose. That can be maintained even in a state of taxation. We all ought to give some thought to that; we must think about why we're here.[8]

If hospitals can answer that question, they will understand the ethical underpinnings of the tax debate: that society wants to believe in its hospitals, because society wants to believe in itself. To the extent that hospitals frustrate that wish, the public will ask for its money back; to the extent that hospitals fulfill that wish, the fragile covenant between them and the society they reflect can only grow stronger. □

Some of the concepts in this article were originally presented at the Indiana Hopsital Association's TeKolste Forum in May 1991. Copies of the forum proceedings are available from Lisa Mattingly, Indiana Hospital Association, PO Box 82063, Indianapolis, IN 46282.

NOTES

1. Eli Ginzberg, "Philanthropy and Nonprofit Organizations in U.S. Health Care: A Personal Retrospective," *Inquiry*, Summer 1991, pp. 179-186.
2. Rosemary Stevens, "A Poor Sort of Memory: Voluntary Hospitals and Government before the Depression," *Milbank Memorial Fund Quarterly*, vol. 60, no. 4, 1982, pp. 551-584.
3. Health Care Financing Administration, Office of the Actuary, December 1990.
4. Charles Rosenberg, *The Care of Strangers*, Basic Books, New York City, 1987.
5. Rosenberg.
6. David Seay and Bruce Vladeck, *Mission Matters*, United Hospital Fund, New York City, 1987.
7. Rosemary Stevens, *In Sickness and in Wealth: American Hospitals in the Twentieth Century*, Basic Books, New York City, 1989.
8. Emily Friedman, "Taylor: Tax Exemptions v. Charitable Spirit," *Hospitals*, January 20, 1988, pp. 58-60.