A Right to Health Care

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Although not legally established, the idea that every American has a right to some level of health care has gained wide acceptance (III, Veatch and Branson 1976; IV, Buchanan 1983; III, Bole and Bondeson 1991). Support for this right has developed primarily in the 50 years since the end of World War II.

No mention of health care can be found in either the Declaration of Independence or the Constitution; indeed, there was little anyone could do to improve health care or health outcomes in colonial times (IV, Capron 1989). During the 19th and early 20th centuries a government role in improving public health developed when certain services, such as clean water (V, Roemer 1988), or certain demands upon its citizens, such as quarantine for disease (VI, Fox 1989), were instituted in order to achieve better and safer conditions for the health of the general populace.

Nonetheless, Congress passed a law establishing the Relief of Sick and Disabled Seamen in 1798 that provided medical care for merchant marines (IV, Capron 1989). Later, other national groups benefitted from congressional action; health care was guaranteed to persons in the armed services, war veterans, Native Americans, prisoners, and federal employees (V, Kinzer 1990).

The World Health Organization (WHO) in 1946 went so far as to state that “The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being . . . .” Health was defined by WHO as a “state of complete physical, mental and social well-being and not merely the absence of disease or infirmity” (II, World Health Organization 1958). In 1948, the new United Nations in its Universal Declaration of Human Rights stated that “Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including . . . medical care” (II, United Nations 1948). This early declaration was followed by others which cited health or health care as benefits owed to all (III, Fuenzalida-Puelma and Connor 1989).
In 1965 the federal government instituted Medicare and Medicaid, funding medical care for those over 65 years of age and some poor people, thus guaranteeing a right to health care for a sizable portion of the American population. Another milestone in guaranteeing health care to citizens occurred in 1969 when the Congress passed a law funding renal dialysis for kidney failure. Anyone could receive this treatment at government expense, ensuring a right to treatment for kidney disease.

The rights debate flourished during the 1960s and 1970s when the discussion entered the medical ethics literature. One of the earliest works to discuss rights to health care was ETHICS AND HEALTH POLICY, a 1976 book edited by Robert M. Veatch and Roy Branson (III, Veatch and Branson 1976), which indicates that the phrase “right to health care” had achieved wide currency. The authors examined issues related to the just distribution of health care resources, the obligations of citizens, and equitable benefits for all. Other works of a philosophical nature followed, including MARKETS AND MORALS (III, Dworkin, Bermant and Brown 1977), and the June 1979 issue of the Journal of Medicine and Philosophy, which was devoted entirely to Rights to Health Care (III, Engelhardt). Very early articles included Charles Fried’s Equality and Rights in Medical Care, and David Mechanic’s Rationing Health Care: Public Policy and the Medical Market Place, both in the February 1976 Hastings Center Report (V, Fried; Mechanic).

The President’s Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research 1983 report, SECURING ACCESS TO HEALTH CARE: THE ETHICAL IMPLICATIONS OF DIFFERENCES IN THE AVAILABILITY OF HEALTH SERVICES (I, President’s Commission 1983) noted that in 1952, the President’s Commission on the Health Needs of the Nation concluded that “access to the means for the attainment and preservation of health is a basic human right.” However, the 1983 report did not use rights terminology, referring instead to “ethical obligations”, i.e., society’s obligation to ensure equitable access to health care for all without excessive burdens (p. 4). The Commission states in that report that it has “chosen not to develop the case for achieving equitable access through the assertion of a right to health care,” noting that neither the Supreme Court nor any appellate court has found a constitutional right to health or to health care (pp. 32-33).

Present day discussions continue, often using the same language, arguments, and philosophical theories found in work published 10 or 15 years ago. Reflecting this continuing interest in a right to health care, the 1992 Democratic platform includes right to health care terminology (VI, New York Times 1992), and Republican President Bush spoke about a right to health care in his 1991 State of the Union address (V, Trafford 1991). Indeed, the national electorate in various polls conducted in 1992, indicated that health care was second only to the economy as the topic of greatest concern (VI, Smith, et al. 1992).

Many dilemmas exist in determining how to deliver the health care to which all may have a right. A 1992 Harris poll indicated that 60% of 2,000 persons surveyed wanted the federal government to provide solutions to problems in health care cost, access, and allocation (VI, Smith, et al. 1992). A “communitarian” theory is newly popular as a way to allocate health resources. It would move toward the welfare of the community as a whole and away from a market-based individualism in health care (VI, Pawlson, Glover, and Murphy 1992).

In April 1992, the state of Minnesota enacted legislation known as HealthRight (the enacted program is now known as MinnesotaCare), which attempts to control costs and at the same time, guarantee health care to persons who are not covered by health insurance. Several other states now have enacted plans that attempt to control
costs while also making health care insurance more available to those not currently covered (V, Caplan and Priester 1992).

Scope Note 20 provides bibliographic citations to literature on various theories of rights to health care, and on ways to achieve just allocation of health benefits.

**I. Government**


The Commission proposed a framework within which debates about health policy could take place. It concludes in this report that society has an ethical obligation to ensure equitable access to health care for all, and that the ultimate responsibility for ensuring the obligation is the federal government’s. Equitable access requires that all be able to secure an adequate level of health care without excessive burdens. The societal obligation is balanced by individual obligations. Cost should be shared fairly, but efforts to contain rising costs should not focus on limiting access for the least well served part of the public.

**II. Organizations**


“We have concluded that nothing short of universal access to a level of basic health care will be fair in the long run. How we achieve that goal and the best mechanism required have yet to be determined and must engage all concerned citizens.”


“Every person has a basic right to adequate health care. This right flows from the sanctity of human life and the dignity that belongs to all human persons, who are made in the image of God. It implies that access to that health care which is necessary and suitable for the proper development and maintenance of life must be provided for all people, regardless of economic, social or legal status. Special attention should be given to meeting the basic health needs of the poor. With increasingly limited resources in the economy, it is the basic rights of the poor that are frequently threatened first.

“Following on these principles and on our belief in health care as a basic human right, we call for the development of a national health insurance program. It is the responsibility of the federal government to establish a comprehensive health care system that will ensure a basic level of health care for all Americans.”


This is a collection of human rights statements by various organizations which includes health citations. The constitution of the Pan American Health Organization states in its first article that among its purposes is to “promote and coordinate efforts of the countries of the Western Hemisphere to combat disease, lengthen life, and promote the physical and mental health of the people.”


“Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing,
housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”


“The State Parties to this Constitution declare, in conformity with the Charter of the United Nations that the following principles are basic to the happiness, harmonious relations and security of all peoples:

Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.

The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.”

III. Books/Special Issue


Pointing out that opinion polls over three decades have indicated that Americans support the proposition that the government should guarantee health care to all, Daniels in the introduction to the eight essays gathered in the volume, says that it is as if “good health were a fundamental element in the equality of opportunity so basic to the ideological orientation of Americans.” Distributive justice, a right to relief from pain, equity in both access and allocation, quality care, the clinical relationship, and inappropriate care are among the topics discussed.


A collection of 16 essays by well-known medical ethicists, including Tom Beauchamp, Robert M. Veatch, H. Tristram Engelhardt, Baruch Brody, Allen Buchanan, Norman Daniels, Hans-Martin Sass, and David Friedman, the book is divided into five sections: Rights to Health Care: The Development of the Concept; The Right to Health Care: Presentation and Critique; A Qualified Right to Health Care: Toward a Notion of a Decent Minimum; Equality, Free Markets, and the Elderly; and Health Care as a Commodity. This work considers the obligations incurred when the poor health of some members of society uses the labor and resources of all members, and explains, defends, or questions a variety of bases for providing health care.


Callahan thinks that the current vision of the right to health rests on the idea of health as an unbounded good and the right of the individual to define his or her own health needs. A right to health care based on such premises demands the support of and obligations from fellow citizens. Such a construct, warns Callahan, will collapse under its own weight.


Daniels articulates the kind of social good inherent in health care and looks at the principles needed by society for its provision. He develops a theory of justice for health care, and an approach that he calls the “fair equality of opportunity account” which he hopes can offer practical guidance in reforming access to the health care system.


The book provides a moral evaluation of American health care. It is divided into three parts: Realities, a review and analysis of access to health care; Rights, a philosophical analysis and defense of the concept of a moral right to health care; and Reforms, a discussion of the reforms needed in the delivery of health care to ensure
the right. In the Rights area, four theories of justice and of persons’ rights are examined with their implications for health care. Dougherty thinks that the right to health care is made up of four separable rights: noninterference with one’s health, primary care, curative care, and the freedom to buy care not guaranteed by right.

This report of a 1974 Battelle Institute meeting looks at issues where economic theory and moral philosophy meet. The editors state that health is a natural right that cannot be bargained for and which must be provided from outside the market structure. Reuben Kessel, Peter Singer, and Charles Fried contribute papers on rights, all written from an economic point of view.

Calling the phrase “a right to health care” a cliche, Engelhardt goes on to point out that the term embodies an important moral concern, which he says is usually the case in rights talk. He analyzes nine different kinds of health rights claims to show the varied sense of the word ‘right’. Other essays about health care rights in this issue are by Tom L. Beauchamp, Ruth R. Faden, James F. Childress, Mark Siegler, Nora K. Bell, Robert M. Veatch, Norman Daniels, William Ruddick, and Laurence B. McCullough.

A comprehensive collection of international health rights documents from North and South America, the work is an excellent resource for material concerned with health and health care. It is divided into three parts: concepts about human rights law and the right to health care; material concerning a right to health selected from constitutions of 35 different countries; and finally, a summary and analysis of the constitutions, particularly, human rights relative to health. The work contains the United Nations Charter, the International Bill of Human Rights, the Universal Declaration (which states a right to a standard of living adequate for health and well-being including medical care), and other international documents. (See also V, Capron 1989).

Menzel thinks that if individuals were to choose from their own funds what to spend on health care, they would spend only limited amounts, allotting monies to a variety of needs. He favors public assistance given as income. He does not consider health care a public good (like the national defense or a lighthouse system along the seashore), but a private good, distributed to and enjoyed by separate individuals. He says aid has become charity, a privilege given to the poor, but not a right of the poor. Menzel favors mother and child health care, but does not think that general health care should be provided to all.

Menzel grants that minimal food, clothing, shelter, and health care are one’s rights “in the time during which one is already assumed to be living. But why, just because that is true, must we ignore their costs when the matter at issue is explicitly the extension of one’s life?” (p. 64). Menzel thinks that any rationing process of health care should represent the preference of patients for their “larger lives.” He questions what it means to guarantee health care that is “adequate,” “minimally decent,” or “essential.”

The Commission was formed in 1986 by a group of citizens to propose ways to solve the problems of access, cost, and quality in health care. The Commission recommended a major restructuring of health care delivery based on seven fundamental principles (universal access,
fair compensation for services, clinical and economic freedom, shared responsibility for cost, individual responsibility, basic benefits guarantee and a strong doctor-patient relationship) they developed during deliberations. The first of these states that there should be no financial barrier separating Americans in need of health care from access to available care.


The first section in this collection of 15 essays offers an historical and conceptual background that includes an essay on the relationship between justice and rights. Eric J. Cassell, Marc Lappe, Albert Jonsen, and Michael Bayles discuss micro-allocation issues; H. Tristram Engelhardt, James F. Childress, Baruch Brody, and others present issues of macro-allocation.


Shenkin supports the proposition that ethics and rights have an evolutionary origin, existing to benefit society. His book is divided into two parts: the first is theoretical and offers support for the author’s thesis that the development of human culture follows rules similar to those which govern genetic evolution, and the second discusses bioethical issues.


This early work looks at the conflict between serving the interests of society and of the individual patient by offering four different perspectives on the meaning of justice in health care distribution. The preamble to Section C: The Right to Health Care states that the phrase has become widely accepted in public debate about medical care delivery (see also IV, Callahan 1976; Steinfels 1976; Singer 1976).


Veatch’s work presents an analysis of the issues involved in how fairly to allocate limited resources by examining concepts of justice, equality, and social responsibility. He explores the connections between equality and variations in lifestyle, emphasizing the practical implications of equality for public policy.

IV. Chapters/Sections


Buchanan says that a consensus that there is a right to at least a decent minimum of health care pervades policy debates and much of the philosophical literature on health care. He thinks that a concept of rights is complex and controversial; when a person has a right to something, he/she is entitled to it and it is due to the person. He goes on to point out that this is not the same as saying that it is good or morally good or even desired by the person. Buchanan discusses different arguments concerning the right and ways it might be interpreted.


Callahan argues that a concept of a right to health must make clear what the limits to the right are. A right to health has already been granted, he indicates, but since it knows no limits, maldistribution of care is guaranteed. Callahan holds that for both practical and theoretical reasons, the right is a limited right. The author discusses the tension that he sees between what he calls “the tyranny of survival” and “the tyranny of individualism.”

Capron points out that the Constitution of the United States does not even contain the word ‘health’; government and society were seen as having little responsibility for health since there was little value in treating illnesses in the 18th century. He thinks the trend of the law is toward creating protection for health in the broadest sense, and that motherhood and childhood are entitled to special care.


Churchill notes that rights language has become the favored way to discuss considerations of justice in health care. He thinks that this is unfortunate; that individual rights are only a part of the moral significance of rights, and distort the role of the person in a communal order of living. The author discusses prior rights, freedom, individual responsibility, human needs, and the needs of strangers.


Marsh and Yarborough note that there is no clear constitutional right to health care, but think that the idea of an equal right is held by most Americans, who view it as a special good. They perceive that problems arise in moving from the abstract to the concrete. A right to a “decent standard of care” would not be viable nor stem rising costs. The authors question the viability of the notion of a “basic level” of health care, and urge beneficence as the means of achieving human well-being.


Saying that medical care is neither a right nor a privilege, Sade holds that it is a service provided by physicians and others to people who wish to purchase it.


Calling the right to health care one of the “welfare rights,” Singer says such a right depends on available resources which must be balanced against competing uses of these resources. He suggests that it is better to discuss and assess actual benefits rather than abstract notions of human rights and whether health care is one.


The author points out that no fundamental right to health care is presently recognized in U.S. courts, noting that access to medical care is available to fewer and fewer people, and that the moving force behind discussions of national health insurance are cost control, not expanded service. He offers no solution except to minimize excesses and to maximize “physical, mental, and social well-being.”

V. Articles


Criticizing a Dallas judge’s decision to dispense AZT to indigent AIDS patients, Annas opines that politics not law guided the ruling, since there is no constitutional right to medical care. The author argues that any solutions to lack of
access to health care should come from Congress and the state legislatures, both better suited to make such decisions than the courts.


The author tracks Roman Catholic papal encyclicals and bishops’ pastoral letters to present the historical background of a right to health care. Barnet cites documents from 1891 forward.


Physician Barnet thinks that everyone in the United States has a “derivative” right to health care, not a natural or fundamental right. He sets forth eight initiatives “that might result in a more just health-care system,” including the concept that the community at large should make clear statements of what is seen as important in basic health care.


Bayer argues that the President’s Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research attempted to produce an apolitical report on health care in America, which he thinks is an impossible task due to differences in what he terms liberal and conservative viewpoints of the commissioners and the staff. He describes various drafts concerned with health care rights, and notes that “language of rights” was cause for concern between members of the panel. Bayer writes that the report makes clear that its enunciation of a societal obligation to assure access to health care does not presuppose a corresponding right to health care at all. “Rather than simply lament the not-uncommon failure of reality to match ideals, there is a need to explore the true contours of the ‘right’ [to health care] and to examine the nature of the health care to which equity requires access.” Bayer looks at the use of the terms “adequate” and “equitable” in the Commission report.


The authors reassert the moral priority of equity and hold that all Americans, rich, middle class and poor alike, should be entitled to a decent level of health care, which should be guaranteed. They claim that whether it is a right or a societal obligation is less important than recognizing the moral commitment that all persons have access to the full range of necessary health care services.


The authors examine issues pertaining to the right to health and the right to health care and note that the nature and justification of such rights applies to all rights. They provide a philosophical and historical background and analyze arguments concerning both positive and negative rights. They conclude that “the major issues about right to health and health care turn on the justifiability of social expenditures rather than on some notion of natural, inalienable, or preexisting rights.”


Noting that the debate over whether or not the access to health care is a right that should be guaranteed to every citizen, the authors state that they reframe this question to whether or not everyone should be guaranteed a health insurance plan by the federal government. They offer outlines of 41 different proposals for national health programs.


Brodeur states that to date, none of the various health care reform packages address whether health care is a right for all Americans. “Typically, proponents of reform have been more comfortable approaching healthcare
services as something society has a moral obligation to provide rather than something individuals have a right to. Such an approach is consistent with the liberal democratic tradition’s understanding of rights, which stresses individual freedom and autonomy.”


Brody argues that the President’s Commission avoided the controversial issue that the medically indigent have a right to some health care. He thinks that the Commission’s claim of “special obligations” relative to health care isolates health from other equally important needs and only makes it a good thing to have, but with no obligation for its provision. He concludes that the Commission’s arguments justify a two-tier system of health care. He proposes that the Commission left unmet the need to study justice in the allocation of health resources.


Enactment in April 1992 of Minnesota’s health reform legislation, HealthRight, does not ration health services, but attempts to contain costs and to increase access to health care for all Minnesotans, according to Caplan and Priester.


Pointing out that there is no constitutional provision to support the right to a minimal level of health care services, Curran indicates that reasonable legal arguments can be made for this right or entitlement, particularly for adequate health care services for the poor. He discusses *Wideman v. Shallowford Community Hospital, Inc.* (826 F. 2d 1030 (1987)) where plaintiffs’ attorneys appealed on the grounds that Mr. and Mrs. Wideman had a constitutional right to medical services at their own hospital, provided by their own doctor when they called the county emergency services. The court found there was no special relationship between the Widemans and the county government. Such a relationship does exist for persons who are jailed or in custody, since they could not seek care on their own.


Law professor Dougherty provides arguments for a recognition of a legal right to some degree of health care to achieve needed reform in the delivery of health services. His article discusses *Manlove v. Wilmington General Hospital* (53 Del. 338, 169 A.2d 18 [1961]); and the appeal, *Wilmington General Hospital v. Manlove* (54 Del. 15, 174 A.2d 135 [1961]), whereby private hospitals with emergency rooms were held to the established custom of rendering aid. In the case, Darien Manlove, a four month old infant, died in 1959 when the hospital refused to admit the sick child. The author says that the case spurred a series of decisions that have created what is almost a right to critical health care in the hospital emergency room. This right depends neither on the existence of a doctor-patient relationship nor on the vagaries of the gifts of the medical covenant. He concludes that “access to a decent level of health care is something Americans have come to expect. We expect it not only if it can be bought, not only if it is given in charity, but as something which is ours, ours as a matter of right.”


In providing a background to the idea of a right to health care, Drane succinctly describes the different justice theories in pluralistic contemporary culture, each supporting different ways to deliver health care justly. He discusses the libertarian theory for just distribution of health care held by H. Tristram Engelhardt and Charles Fried; the egalitarian theory of Robert Veatch, (also held by James Childress and Paul Ramsey, according to Drane); John Rawls’ egalitarian-libertarian theory; and a utilitarian theory including Tom L. Beauchamp’s view that there is no positive right to health care, but there
is a social obligation to provide health care goods and services. Drane goes on to discuss socialistic and Marxist theory with its advocacy of a positive right to health care, and points out that now capitalistic countries promote a right to health.


Fein urges a definition of the phrase “the right to health care” as a necessity to provide a conceptual base and a framework for future policy. He states that the two basic problems are those of health expenditures, and of equity and access. Budget targets that reflect citizens’ expectations of benefits and distribution of care that reflects medical needs and true costs are required. He says the right is similar to such areas as education, parks, and basic sustenance.


Stating that the obligation to assure access to health care for all may be either beneficence-based or justice-based, Fleck opines that the former is a much weaker obligation and argues that the concept is seriously flawed since it identifies only the grossest injustices in the distribution of health care. He thinks that a theory of justice in health care is needed in place of a general justice theory, and that this specific theory should be a political, constitutional model.


This early essay holds that a right to health care does not imply a right to equal access, i.e., that whatever is available to any person shall be available to all persons. Fried states that equal access produces intolerable government controls on medical practice and an overall unreasonable burden of cost.


Gibson strongly views the delivery of health care as a right to which all in need should have equal access. He expresses the hope that a national sense of decency will ensure the right.


The authors discuss allocation of health care from various philosophical points of view, drawing particularly on the “lifeboat” situation when hard choices must be made. They urge the dictates of fairness be taken more seriously, since they think public funds are often wasted on purposes less important than health.


Jones thinks that it is inconsistent for states to offer certain forms of protection commonly provided without also furnishing a certain amount of health care. He perceives disease as one of the threats to the well-being of the population, and thinks that citizens should be provided protection from major threats to life. He stresses that the primary function of the state is to protect citizens.


The differing evolution of the concept of a right to health care in the United States, Great Britain, and Russia is described and compared. Tolerations of unequal distribution of services in America is attributed to physician opposition to the notion of health care as a right and the inability of the government to develop a comprehensive health care delivery plan.


In 1965, medical services were made a right for the elderly and some poor, Kinzer notes, saying that Congress practices incrementalism in health legislation with citizens’ rights to receive
essential medical services steadily increasing. Legislation or court decrees now guarantee health services to be the right of Native Americans, prisoners, patients in mental hospitals, members of the military, federal employees, war veterans, and the merchant marine. He urges settling the entitlement question before deciding how a health care system should be designed.


The editor of JAMA writes in an editorial: “. . . surely we in this rich and successful country can manage to provide basic medical care because it too is the right thing to do, and the time has come. A long-term crying need has developed into a national moral imperative and now into a pragmatic necessity as well.”


Rabbi Mackler (who is also an ethicist on the staff of the New York State Task Force on Life and the Law) extrapolates the general requirements for justice in traditional Jewish belief and understanding to hold that provision of a “decent minimum” of health care sufficient to meet the needs of each member of society would be required. He looks at legal codes and enforceable obligations in Rabbinic Judaism, and discusses the significance of the Jewish model for this country.


Saying that a right to medical care is not the same as the rights of individual self determination established by the Declaration of Independence and the Constitution, McIntyre thinks unrealistic patient expectations of rights will disrupt the patient-physician relationship.


Mechanic writes that a right to health care means that government will assure each person a reasonable level of health services and take steps to ensure that entitlement can be exchanged for services. He predicts that rationing will inevitably have to be imposed and notes that the scope of entitlement must be an issue for public discussion.


The author discusses the right to adequate medical care of those in prison, providing various statutes and regulations protecting this right.


In this early work, Pellegrino argues that the need for primary care is a universal human need which imposes on society and on the professions a strong obligation in a democratic, affluent, and technologically capable society. Calling the philosophy of rights a complex subject, he says that “moral obligations arise whenever some right exists, that is, wherever a person holds a strong claim on another or on society.” He thinks that the right to primary care is prior to the larger one of a right or guaranty to health care. He uses an Institute of Medicine description of primary care characteristics as accessible, comprehensive, coordinated, continuous and accountable.


Pope John XXIII in this early statement says that every person “has the right to life, to bodily integrity, and to the means which are necessary and suitable for the proper development of life; these are primarily food, clothing, shelter, rest, medical care, and finally the necessary social services.”


Reporting a talk by Gene Outka, professor of
philosophy and Christian ethics at Yale, Porter presents Outka’s standards of justice which he says are difficult to apply to health care: merit or just desert, social contribution, supply and demand, and equality. Outka’s most fitting standard is need, but he indicates that when it is possible, a person must have personal responsibility for maintaining health.


An address to the American Public Health Association by its President explores the right to health care in the United States, discussing the constitutional, moral, egalitarian, and libertarian viewpoints as well as a social right guaranteed by declarations in which the United States has participated. Roemer rejects incrementalism as a method of extending programs, and offers a comprehensive approach in order to achieve a right to health care for all Americans.


Discussing what he says are questionable assumptions about the nature of rights, power, illness, inequality, and money, Ruddick claims that a right to health care can be based on other more general rights to life, liberty, and health. He does not think that it “enslaves” or coerces physicians and nurses, but does indicate that a right to health care could curtail medical establishment power. He stresses that a general right to health care does not entail unlimited access.


Trafford calls the phrase “the right to health care” one of the most divisive political issues in medicine. Her article is a comment on the 1991 State of the Union speech by President Bush in which he said: “Good health care is every American’s right.” Trafford says that it marks the first time President Bush had stated that health care is a right.


The author holds that the right to medical care is one of the rights of an individual requiring the state to do something—in this case, to provide the services. He thinks that state responsibility is compelling in developing countries, since they lack the help that private enterprise might provide. Any privatization would have to be accompanied by state incentives.


Van Eys thinks that medicine, “the health-care industry,” has become a business which is no longer accessible to all in need. He explains that health care, like education, is a fundamental social enterprise, and that the nation will not endure unless medicine changes inconsistencies between principles and practice.

VI. References


(Scope Note 20, *A Right to Health Care*, was prepared by Pat Milmoe McCarrick, a reference librarian at the National Reference Center for Bioethics Literature.)
Aristotle and the Right to Health Care: A Cautionary Tale
Appendix to Scope Note 20
March 2008

by Edmund D. Pellegrino, M.D., and staff at the National Reference Center for Bioethics Literature

A conversation is taking place in the philosophical literature as to whether or not the concept of rights originated in modern times or dates to the classical period. One focus of the debate has been on Aristotle’s work, especially his Politics, with writers of every philosophical persuasion claiming Aristotle as part of their family tree and citing his work to validate their own.

In the midst of an election year, one particular question about rights seems to arise more than others, namely, is there a right to health care? This question recurs in today’s debates about health care reform and it hovers over the plans proffered by the candidates of both parties. Attention to this question promises to intensify as the actual election approaches.

Did Aristotle support a right to health care?

In past debates, a quotation attributed to Aristotle sometimes has been used as a proof text to support an entitlement to health care as a matter of social justice:

“If we believe men have any personal rights at all as human beings, they have an absolute right to such a measure of good health as society, and society alone is able to give them.”

Such an endorsement by the father of ethics and politics surely would have rhetorical weight for many in the Western world.

But proof texts are notoriously risky. They may be wrongly attributed, badly mangled in translation, or inconsistent in style and content with the thought of their presumed originators. Some combination of these happenstances seems to have fallen on the quote cited above and claimed to come from the lips of Aristotle.

In attempts to establish the provenance of the text in question we have conducted an extensive search for its source and original wording. We have not been able to locate it. Our initial curiosity was aroused by several things, including that rights language did not seem to have the Aristotelian context, and health care, as such, was not included in Aristotle’s works. We searched Nicomachean Ethics and Eudemian Ethics, and the Magna Moralia without successfully locating the quote. Nor could we find it in other of works of Aristotle: On Length and Shortness of Life, De Anima, Economics or the Fragments. “Rights” language certainly would stick out in Aristotle’s virtue-based ethics.
Use of the quote in question has been traced to Ruth Roemer, who, when President of the American Public Health Association, used it to begin her chapter in *The Right to Health in the Americas: A Comparative Constitutional Study* (1989). Roemer obtained the quote from an article by Walter P. von Wartburg published in *The Right to Health as a Human Right/Le Droit à la Santé en tant que Droit de L’Homme* (1979). Von Wartburg translated the quote himself from, if memory serves him correctly, a Latin edition of the *Nicomachean Ethics* (email correspondence with the National Reference Center for Bioethics Literature, August 17, 2006).

To return to our opening focus, Roemer and von Wartburg’s use of a quote linking Aristotle to a right to health care is part of the broader conversation in the philosophical literature about the origin of a concept of rights and, specifically, whether any classical foundation exists for the right to health care. Philosophy Professor Leif Wenar notes that scholarly inquiry into the origins of our modern sense of "a right" is complicated by the fact that “...ancient authors often used words imprecisely” and modern scholars often exhibit an “over-optimistic assumption about the sharpness of conceptual boundaries” (Stanford Encyclopedia of Philosophy, 2007). Wenar contrasts an older, “objective” sense of “right” meaning “what is just” or “what is fair” with a modern “subjective” sense of “a right.” He identifies two main thrusts in recent scholarly discussions of rights. The first is the finding of a modern understanding of rights far earlier in history than previously thought. Scholars have pushed this notion back in time, moving “...from Locke in the seventeenth century, to Hobbes and Grotius in the sixteenth, to Gerson in the fifteenth century, Ockham in the fourteenth, perhaps even to Gratian in the twelfth.” The second thrust is the assertion that active rights (rights to do something) predate passive rights (rights to be free from something).

Thomas J. Papadimos (2007) argues that Western thought on healthcare access supports health care as a “right” and not as a “privilege.” Papadimos reviews the works of Aristotle, Immanuel Kant, Thomas Hobbes, Thomas Paine, Hannah Arendt, John Rawls, and Norman Daniels on this issue.

The following abstracts for a Symposium on Aristotle’s *Politics* provide a representative sample of the arguments on the possibility (or lack thereof) of an Aristotelian concept of rights. At a future date, the National Reference Center for Bioethics Literature staff will update *Scope Note 20: The Right to Health Care* with additional citations on the classical roots for and modern discussions of the right to health care.

Abstracts:


After noting that racists have referenced Aristotle’s concept of nature to support their views on slavery, Annas suggests that “...Aristotle’s own lack of precision about the role of nature in his ethical and political arguments must bear some of the responsibility” for the misuse of his ideas. The author examines the differences in Aristotle’s *Politics* between “mere nature” and a concept of nature “that is clearly normative” (p. 735). Annas posits that this distinction helps elucidate a passage in *Politics* book 7 where Aristotle recognizes that “…because of some chance or nature...

Cooper compares various translations of Aristotle’s *Politics*, some employing the language of “rights” and some completely avoiding it. The author insists that translating the Greek for “the just” as “a (or ‘the’) right” is incorrect (p. 868), and concludes that rights were not important for Aristotle as they are for us today (p. 872).


The author answers the question posed in the article’s title by saying that while there is a concept of rights in Aristotle’s work, it is weak and does not play a significant role in Aristotle’s thinking (p.755). Kraut contrasts Aristotle’s use of “rights” with Locke’s writings on the topic, and concludes that “…Aristotle does not have any word that divides up the moral universe in roughly the way our word “rights” does…[s]o perhaps all that can be said in favor of the idea that Aristotle has the concept of rights is that there is a similarity between some of his claims and later claims made by philosophers who have full-scale theories of natural rights” (p. 774).


Long critiques the work of Fred Miller (see an abstract on Miller below) by claiming that Aristotle is an even more complex thinker than Miller suggests, and that “…Aristotle’s normative social theory contains both liberal and communitarian tendencies, often closely intertwined” (p. 777). The author argues that Aristotle does recognize the right to do wrong, the existence of pre-political rights, the high intrinsic value of liberty, and a Kantian form of autonomy. While not trying to make Aristotle into a liberal, Long thinks that “…a broadly Aristotelian account of human nature and the human good provides the most attractive foundation of a liberal political theory” (p. 802).


McGrade focuses on thirteenth and fourteenth century commentaries on Aristotle, “…a period in which something like a modern conception of natural rights becomes indisputably visible” (p.805). The author describes what we owe, in terms of language, to Marsilius of Padua (p. 816). The writings of Thomas Aquinas and William of Ockham also are explored. McGrade argues that “…although both the modern language of rights as powers and the substance of some fundamental rights are most clearly to be found or recognized in passages lacking direct reference to Aristotle, the language and the content are arguably congenial to Aristotle’s emphasis on *dynamis* or potentiality as a central notion in every branch of knowledge” (p. 826).

Miller discusses the three main theses that he attributes to Aristotle: “...that a metaphysical theory of nature is part of the foundations of political philosophy; that the virtue of justice is central to practical politics; and that a fully just constitution will respect and protect the rights of citizens” (p. 873). The author responds to commentary on these theses by symposium participants John Cooper, Malcolm Schofield, and Richard Kraut.


Insisting that knowledge of Athens’ history is essential for understanding Aristotle’s work, Schofield notes that “[c]itizenship as Aristotle conceives it is a matter not primarily of possessing certain rights, but of ‘sharing in the constitution’”(p. 831). Adopting the canons of mainstream historical and Aristotelian scholarship, the author concludes that “[h]ow Aristotle actually talks is the best clue we have to how he thinks” and “sharing in the constitution is as close to rights as a citizen gets” (p. 856).


