Medical Care as a Right: A Refutation

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The current debate on health care in the United States is of the first order of importance to the health professions, and of no less importance to the political future of the nation, for precedents are now being set that will be applied to the rest of American society in the future. In the enormous volume of verbiage that has poured forth, certain fundamental issues have been so often misrepresented that they have now become commonly accepted fallacies. This paper will be concerned with the most important of these misconceptions, that health care is a right, as well as a brief consideration of some of its corollary fallacies.

Rights—Morality and Politics

The concept of rights has its roots in the moral nature of man and its practical expression in the political system that he creates. Both morality and politics must be discussed before the relation between political rights and health care can be appreciated.

A "right" defines a freedom of action. For instance, a right to a material object is the uncoerced choice of the use to which that object will be put; a right to a specific action, such as free speech, is the freedom to engage in that activity without forceful repression. The moral foundation of the rights of man begins with the fact that he is a living creature: he has the right to his own life. All other rights are corollaries of this primary one; without the right to life, there can be no others, and the concept of rights itself becomes meaningless.

The freedom to live, however, does not automatically ensure life. For man, a specific course of action is required to sustain his life, a course of action that must be guided by reason and reality and has as its goal the creation or acquisition of material values, such as food and clothing, and intellectual values, such as self-esteem and integrity. His moral system is the means by which he is able to select the values that will support his life and achieve his happiness.

Man must maintain a rather delicate homeostasis in a highly demanding and threatening environment, but has at his disposal a unique and efficient mechanism for dealing with it: his mind. His mind is able to perceive, to identify percepts, to integrate them into concepts, and to use those concepts in choosing actions suitable to the maintenance of his life. The rational function of mind is volitional, however; a man must *choose* to think, to be aware, to evaluate, to make conscious decisions. The extent to which he is able to achieve his goals will be directly proportional to his commitment to reason in seeking them.

The right to life implies three corollaries: the right to select the values that one deems necessary to sustain one's own life; the right to exercise one's own judgment of the best course of action to achieve the chosen values; and the right to dispose of those values, once gained, in any way one chooses, without coercion by other men. The denial of any one of these corollaries severely compromises or destroys the right to life itself. A man who is not allowed to choose his own goals, is prevented from setting his own course in achieving those goals and is not free to dispose of the values he has earned is no less than a slave to those who usurp those rights. The right to private property, therefore, is essential and indispensable to maintaining free men in a free society.

Thus, it is the nature of man as a living, thinking being that determines his rights—his "natural rights." The concept of natural rights was slow in dawning on human civilization. The first political expression of that concept had its beginnings in 17th and 18th century England through such exponents as John Locke and Edmund Burke, but came to its brilliant debut as a form of government

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after the American Revolution. Under the leadership of such men as Thomas Paine and Thomas Jefferson, the concept of man as a being sovereign unto himself, rather than a subdivision of the sovereignty of a king, emperor or state, was incorporated into the formal structure of government for the first time. Protection of the lives and property of individual citizens was the salient characteristic of the Constitution of 1787. Ayn Rand has pointed out that the principle of protection of the individual against the coercive force of government made the United States the first moral society in history.[1]

In a free society, man exercises his right to sustain his own life by producing economic values in the form of goods and services that he is, or should be, free to exchange with other men who are similarly free to trade with him or not. The economic values produced, however, are not given as gifts by nature, but exist only by virtue of the thought and effort of individual men. Goods and services are thus owned as a consequence of the right to sustain life by one's own physical and mental effort.

If the chain of natural rights is interrupted, and the right to a loaf of bread, for example, is proclaimed as primary (avoiding the necessity of earning it), every man owns a loaf of bread, regardless of who produced it. Since ownership is the power of disposal,[2] every man may take his loaf from the baker and dispose of it as he wishes with or without the baker's permission. Another element has thus been introduced into the relation between men: the use of force. It is crucial to observe who has initiated the use of force: it is the man who demands unearned bread as a right, not the man who produced it. At the level of an unstructured society it is clear who is moral and who immoral. The man who acted rationally by producing food to support his own life is moral. The man who expropriated the bread by force is immoral.

To protect this basic right to provide for the support of one's own life, men band together for their mutual protection and form governments. This is the only proper function of government: to provide for the defense of individuals against those who would take their lives or property by force. The state is the repository for retaliatory force in a just society wherein the only actions prohibited to individuals are those of physical harm or the threat of physical harm to other men. The closest that man has ever come to achieving this ideal of government was in this country after its War of Independence.

When a government ignores the progression of natural rights arising from the right to life, and agrees with a man, a group of men, or even a majority of its citizens, that every man has a right to a loaf of bread, it must protect that right by the passage of laws ensuring that everyone gets his loaf—in the process depriving the baker of the freedom to dispose of his own product. If the baker disobeys the law, asserting the priority of his right to support himself by his own rational disposition of the fruits of his mental and physical labor, he will be taken to court by force or threat of force where he will have more property forcibly taken from him (by fine) or have his liberty taken away (by incarceration). Now the initiator of violence is the government itself. The degree to which a government exercises its monopoly on the retaliatory use of force by asserting a claim to the lives and property of its citizens is the degree to which it has eroded its own legitimacy. It is a frequently overlooked fact that behind every law is a policeman's gun or a soldier's bayonet. When the gun and bayonet are used to initiate violence, to take property or to restrict liberty by force, there are no longer any rights, for the lives of the citizens belong to the state. In a just society with a moral government, it is clear that the only "right" to the bread belongs to the baker, and that a claim by any other man to that right is unjustified and can be enforced only by violence or the threat of violence.

Rights—Politics and Medicine

The concept of medical care as the patient's right is immoral because it denies the most fundamental of all rights, that of a man to his own life and the freedom of action to support it. Medical care is neither a right nor a privilege: it is a service that is provided by doctors and others to people who wish to purchase it. It is the provision of this service that a doctor depends upon for his livelihood, and is his means of supporting his own life. If the right to health care belongs to the patient, he starts out owning the services of a doctor without the necessity of either earning them or receiving

them as a gift from the only man who has the right to give them: the doctor himself. In the narrative above substitute "doctor" for "baker" and "medical service" for "bread." American medicine is now at the point in the story where the state has proclaimed the nonexistent "right" to medical care as a fact of public policy, and has begun to pass the laws to enforce it. The doctor finds himself less and less his own master and more and more controlled by forces outside of his own judgment.

For instance, under the proposed Kennedy-Griffiths bill,[3] there will be a "Health Security Board," which will be responsible for administering the new controls to be imposed on doctors, hospitals and other "providers" of health care (Sec. 121). Specialized services, such as major surgery, will be done by "qualified specialists" [Sec. 22(b)(2)], such qualifications being determined by the Board (Sec. 42). Furthermore, the patient can no longer exercise his own initiative in finding a specialist to do his operation, since he must be referred to the specialist by a nonspecialist—i.e., a general practitioner or a family doctor [Sec. 22(b)]. Licensure by his own state will not be enough to be a qualified practitioner; physicians will also be subject to a second set of standards, those established by the Board [Sec. 42(a)]. Doctors will no longer be considered competent to determine their own needs for continuing education, but must meet requirements established by the Board [Sec. 42(c)]. The professional staff of a hospital will no longer be able to determine which of its members are qualified to perform which kinds of major surgery; specialty-board certification or eligibility will be required, with certain exceptions that include meeting standards established by the Board [Sec. 42(d)].

Control of doctors through control of the hospitals in which they practice will also be exercised by the Board by way of a list of requirements, the last of which is a "sleeper" that will by its vagueness allow the Board almost any regulation of the hospital: the hospital must meet "such other requirements as the Board finds necessary in the interest of quality of care and the safety of patients in the institution" [Sec. 43(i)]. Hospitals will also not be allowed to undertake construction without higher approval by a state agency or by the Board (Sec. 52).

In the name of better organization and coordination of services, hospitals, nursing homes and other providers will be further controlled through the Board's power to issue directives forcing the provider to furnish services selected by the Board [Sec. 131(a)(1),(2)] at a place selected by the Board [Sec. 131(a)(3)]. The Board can also direct these providers to form associations with one another of various sorts, including "making available to one provider the professional and technical skills of another" [Sec. 131(a)(B)], and such other linkages as the Board thinks best [Sec. 131(a)(4)(C)].

These are only a few of the bill's controls of the health-care industry. It is difficult to believe that such patent subjugation of an entire profession could ever be considered a fit topic for discussion in any but the darkest corner of a country founded on the principles of life and liberty. Yet the Kennedy-Griffiths bill is being seriously debated today in the Congress of the United States.

The irony of this bill is that, on the basis of the philosophic premises of its authors, it does provide a rationally organized system for attempting to fulfill its goals, such as "making health services available to all residents of the United States." If the government is to spend tens of billions of dollars on health services, it must assure in some way that the money is not being wasted. Every bill currently before the national legislature does, should, and must provide some such controls. The Kennedy-Griffiths bill is the closest we have yet come to the logical conclusion and inevitable consequence of two fundamental fallacies: that health care is a right, and that doctors and other health workers will function as efficiently serving as chattels of the state as they will living as sovereign human beings. It is not, and they will not.

Any act of force is anti-mind. It is a confession of the failure of persuasion, the failure of reason. When politicians say that the health system must be forced into a mold of their own design, they are admitting their inability to persuade doctors and patients to use the plan voluntarily; they are proclaiming the supremacy of the state's logic over the judgments of the individual minds of all concerned with health care. Statists throughout history have never learned that compulsion and reason are contradictory, that a forced mind cannot think effectively and, by extension, that a regimented profession will eventually choke and

stagnate from its own lack of freedom. A persuasive example of this is the moribund condition of medicine as a profession in Sweden, a country that has enjoyed socialized medicine since 1955. Werkö, a Swedish physician, has stated: "The details and the complicated working schedule have not yet been determined in all hospitals and districts, but the general feeling of belonging to a free profession, free to decide—at least in principle—how to organize its work has been lost. Many hospital-based physicians regard their work now with an apathy previously unknown."[4] One wonders how American legislators will like having their myocardial infarctions treated by apathetic internists, their mitral valves replaced by apathetic surgeons, their wives' tumors removed by apathetic gynecologists. They will find it very difficult to legislate self-esteem, integrity and competence into the doctors whose minds and judgments they have throttled.

If anyone doubts that health legislation involves the use of force, a dramatic demonstration of the practical political meaning of the "right to health care" was acted out in Quebec in the closing months of 1970.[5] In that unprecedented threat of violence by a modern Western government against a group of its citizens, the doctors of Quebec were literally imprisoned in the province by Bill 41, possibly the most repressive piece of legislation ever enacted against the medical profession, and far more worthy of the Soviet Union or Red China than a western democracy. Doctors objecting to a new Medicare law were forced to continue working under penalty of jail sentence and fines of up to $500 a day away from their practices. Those who spoke out publicly against the bill were subject to jail sentences of up to a year and fines of up to $50,000 a day. The facts that the doctors did return to work and that no one was therefore jailed or fined do not mitigate the nature or implications of the passage of Bill 41. Although the dispute between the Quebec physicians and their government was not one of principle but of the details of compensation, the reaction of the state to resistance against coercive professional regulation was a classic example of the naked force that lies behind every act of social legislation.

Any doctor who is forced by law to join a group or a hospital he does not choose, or is prevented by law from prescribing a drug he thinks is best for his patient, or is compelled by law to make any decision he would not otherwise have made, is being forced to act against his own mind, which means forced to act against his own life. He is also being forced to violate his most fundamental professional commitment, that of using his own best judgment at all times for the greatest benefit of his patient. It is remarkable that this principle has never been identified by a public voice in the medical profession, and that the vast majority of doctors in this country are being led down the path to civil servitude, never knowing that their feelings of uneasy foreboding have a profoundly moral origin, and never recognizing that the main issues at stake are not those being formulated in Washington, but are their own honor, integrity and freedom, and their own survival as sovereign human beings.

Some Corollaries

The basic fallacy that health care is a right has led to several corollary fallacies, among them the following:

That health is primarily a community or social rather than an individual concern.[6] A simple calculation from American mortality statistics[7] quickly corrects that false concept: 67 per cent of deaths in 1967 were due to diseases known to be caused or exacerbated by alcohol, tobacco smoking or overeating, or were due to accidents. Each of those factors is either largely or wholly correctable by individual action. Although no statistics are available, it is likely that morbidity, with the exception of common respiratory infections, has a relation like that of mortality to personal habits and excesses.

That state medicine has worked better in other countries than free enterprise has worked here. There is no evidence to support that contention, other than anecdotal testimonials and the spurious citation of infant mortality and longevity statistics. There is, on the other hand, a good deal of evidence to the contrary.[8,9]

That the provision of medical care somehow lies outside the laws of supply and demand, and that government-controlled health care will be free care. In fact, no service or commodity lies outside the economic laws. Regarding health care, market demand, individual want, and medical need are

entirely different things, and have a very complex relation with the cost and the total supply of available care, as recently discussed and clarified by Jeffers et al.[10] They point out that " 'health is purchaseable,' meaning that somebody has to pay for it, individually or collectively, at the expense of foregoing the current or future consumption of other things." The question is whether the decision of how to allocate the consumer's dollar should belong to the consumer or to the state. It has already been shown that the choice of how a doctor's services should be rendered belongs only to the doctor: in the same way the choice of whether to buy a doctor's service rather than some other commodity or service belongs to the consumer as a logical consequence of the right to his own life.

That opposition to national health legislation is tantamount to opposition to progress in health care. Progress is made by the free interaction of free minds developing new ideas in an atmosphere conducive to experimentation and trial. If group practice really is better than solo, we will find out because the success of groups will result in more groups (which has, in fact, been happening); if prepaid comprehensive care really is the best form of practice, it will succeed and the health industry will swell with new Kaiser–Permanente plans. But let one of these or any other form of practice become the law, and the system is in a straightjacket that will stifle progress. Progress requires freedom of action, and that is precisely what national health legislation aims at restricting.

That doctors should help design the legislation for a national health system, since they must live with and within whatever legislation is enacted. To accept this concept is to concede to the opposition its philosophic premises, and thus to lose the battle. The means by which nonproducers and hangers-on throughout history have been able to expropriate material and intellectual values from the producers has been identified only relatively recently: the sanction of the victim.[11] Historically, few people have lost their freedom and their rights without some degree of complicity in the plunder. If the American medical profession accepts the concept of health care as the right of the patient, it will have earned the Kennedy–Griffiths bill by default. The alternative for any health professional is to withhold his sanction and make clear who is being victimized. Any physician can say to those who would shackle his judgment and control his profession: I do not recognize your right to my life and my mind, which belong to me and me alone; I will not participate in any legislated solution to any health problem.

In the face of the raw power that lies behind government programs, nonparticipation is the only way in which personal values can be maintained. And it is only with the attainment of the highest of those values—integrity, honesty and self-esteem—that the physician can achieve his most important professional value, the absolute priority of the welfare of his patients.

The preceding discussion should not be interpreted as proposing that there are no problems in the delivery of medical care. Problems such as high cost, few doctors, low quantity of available care in economically depressed areas may be real, but it is naive to believe that governmental solutions through coercive legislation can be anything but shortsighted and formulated on the basis of political expediency. The only long-range plan that can hope to provide for the day after tomorrow is a "nonsystem"—that is, a system that proscribes the imposition by force (legislation) of any one group's conception of the best forms of medical care. We must identify our problems and seek to solve them by experimentation and trial in an atmosphere of freedom from compulsion. Our sanction of anything less will mean the loss of our personal values, the death of our profession, and a heavy blow to political liberty.

Notes

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10. Jeffers, J. R.; Bognanno, M. F.; Bartlett, J. C. On the demand versus need for medical services and the concept of "shortage." Am J Publ Health 61:46–63, 1971.
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Medical Individualism and the Right to Health Care

John Arras and Andrew Jameton

If the basic rights of life, liberty, and the pursuit of happiness seem uncontroversial to us, this is in part because they don't appear to cost very much. These and other so-called "negative rights" merely demand that others leave us alone to pursue our respective visions of the good life. To be sure, this requirement of forebearance places limits on the freedom of others—they cannot act on desires to violate our persons or property—but it doesn't compel others to render us any positive services. The purported right to health care differs from these other basic rights in that it imposes positive obligations on some persons to provide others with the benefit of health services. The right to health care thus entails greater costs both in terms of dollars and human freedom. If we have a right to health care, it necessarily follows that others are obligated to provide us with it. Precisely who these others are is not specified in political slogans concerning the right to health care, but *someone* must be charged with providing it, lest the slogan turn out to be completely vacuous.

The right to health care is problematic because it seems to conflict with the basic rights of others to liberty and to the pursuit of their own happiness. This apparent conflict of rights has set the stage for a remarkably acrimonious debate between the champions of social equality and the defenders of personal liberty. The purpose of this essay is to assess the respective arguments of these warring factions in order to arrive at a clearer understanding of the purported right to health care and its ethical justifications.

Some preliminary remarks are in order before we can get to the arguments. Any careful and responsible discussion of the right to health care must distinguish clearly between health and health care. Unfortunately, few discussions do. Proponents of this right often overlook the important difference between the value to be achieved (health) and one institutional means for securing it (health care). Although it could conceivably be argued that the benefits of greater social equality are a sufficient reason to institute a right to health care—whether or not this would actually improve people's health—we presume for most of this discussion that health care is good only insofar as it effectively promotes, protects, or restores health.

Even if we define "health" inclusively as the mere absence of disease, health care is neither a necessary nor a sufficient condition of health. If we rightly insist on a narrower definition of health —whether as rational free agency,[1] the well-working of the organism as a whole,[2] or the ability to adapt[3]—we notice immediately that health care can play only a relatively minor role in affecting public health. This intuitive impression has been confirmed by medical sociologists and public health researchers whose studies demonstrate that health is a function of many different variables including public hygiene, stress, speed limits, social change, working conditions, and personal habits

such as sleep, exercise, diet, and the consumption of tobacco and alcohol.[4]

We must realize that even if the proponents of a right to health care get everything they want, they will not necessarily give us a healthy or safe culture. If we are serious about health as a basic human *virtue*, then we must abandon the illusion that it can be guaranteed by health care. The achievement of genuine health will require profound changes both in our social practices and personal living habits. The task is immense.

In spite of the limited effectiveness of health care in achieving overall public health, we must not forget that, in individual cases, medical care often plays an indispensable role in preserving life and health through the treatment of disease and injury. Health care does accomplish a great deal, even though it cannot do everything. Should it then be equally available to all, regardless of ability to pay, or should it be bought and sold in the marketplace like any other commodity? Should we recognize a right to health care?

I. Medical Individualism

Western medical practice has always been highly individualistic. An exclusive concern for the well-being of the patient defines the core of the venerable Hippocratic tradition. The physician pledges to devote his or her skills and confidence to the patient alone—not to society, the state, or the greatest happiness of the greatest number. This single-minded emphasis on the integrity of the doctor-patient relationship has tended to insulate physicians from the larger problems of health care allocation. It has also predisposed them to interpret the right to health care as a threat to the individualism upon which their profession is based.

Responding to this threat, a number of physicians and likeminded philosophers have challenged the very notion of a right to health care.[5] Their criticisms are remarkably similar, and thus can be easily subsumed into a reconstructed "model" of medical individualism. The individualist's argument goes something like this: We begin with the undeniable fact that all humans are unique individuals. From this natural fact we can infer that all human beings *own* their respective minds and bodies. Human beings belong to themselves, not to each other or to abstract entities such as the state. Two important corollaries are then derived from the natural right to control our own lives. First, the individualist asserts that we have a right to engage in the production of commodities or values that sustain our lives. Second, we have the right to control or dispose of these commodities or values in any way we see fit. Each of us is morally entitled to whatever we can create by ourselves or acquire through exchanges, gifts, inheritance, and so on.

The individualist claims that all of the above rights are natural rights—that is, they derive their authority from human nature itself, rather than from society or the state. The rights to life and property cannot be conferred or abrogated by the state since, according to the individualist, it is precisely these rights that provide the state with its only reason for being. On this account, the only legitimate function of the state is to safeguard and enforce our natural rights to life and property. Thus, the only morally justified state is the minimal or "night watchman" state of classical libertarian political theory—a state charged only with the protection of private citizens from violence, theft, fraud, and breach of contract.[6]

The individualist describes the violation of these alleged natural rights—by either greedy individuals or benevolent governments—in terms of coercion, theft, and enslavement. Our rights to life and property cannot justly be overridden in the name of social justice—they are inviolable and absolute vis-à-vis all social goals, no matter how important or pressing these may seem. Individual rights are incommensurate with appeals to social utility or distributive justice, so that all attempts to redistribute wealth (without the consent of the parties involved) amount to theft, whether the responsible agent is a burglar in the night or the county tax collector. In spite of Robin Hood's good intentions, the individualist would insist that he was still a thief: he *stole* from the rich to give to the poor, as does the modern welfare state.

The medical individualist is now ready to apply his theory of property rights to the issue at hand—the purported right to health care. His first move is to define health care as property—that is, as a commodity or value produced by individuals in order to sustain life. Health care is neither a right nor a mere privilege; rather, it is a *service*

rendered by the physician to the patient. Health services are the exclusive private property of those who create them.

The adherents of a right to health care ignore this basic fact. Accc rding to the medical individualist, health services do not fall like manna from heaven;[7] on the contrary, they always come already attached to those individuals who produce them. In this respect, health services are more like bread produced by a baker—a favorite medical individualist analogy.[8] Manna rains down from the skies ready for immediate distribution; bread goes through a process of production that transforms it (precisely *how* is never made entirely clear) into the private property of the baker. By focusing all of their attention on the problem of redistribution, the advocates of a right to health care have overlooked the crucial processes of production through which goods such as health care come to be and to be owned. Once we place health services in the category of private property we can conclude with the individualist that a right to health care makes no more sense than a right to a loaf of bread. Both of these rights supposedly lay claim to goods produced and justly controlled by others and thus amount to a right to theft.

From the individualist's perspective, the notion of a right to health care contradicts the natural and inalienable rights to life and to free action in support thereof. Health care providers have a right to dispense their services as they see fit, free from governmental interference. For the medical individualist, this right is the fundamental moral issue at stake in the debate over the right to health care.

II. Critique of Medical Individualism

The medical individualist's theory of rights and subsequent denial of a right to health care are vulnerable to devastating criticisms. In this section, we shall argue that the individualist misconceives the nature and scope of rights, the social status of the medical profession, and the probable fate of freedom and autonomy in a free medical market.

Rights: Their Social Nature and Scope

Rights promote and guarantee certain values or interests, and these values are the natural reason for having certain rights. A complete theory of rights must include an account of the human interests or values that prompt us to claim certain rights. Faced with the argument of medical individualism, we first need to inquire about the values that support the individualist's theory of rights. To be more specific, we must know whether the individualist's supreme values can support an absolute right to private property.

The fundamental value animating the entire individualistic theory of rights is the interest of the individual in sustaining his or her own life. This interest grounds a corresponding right to life. The case against health care rights ultimately rests on the alleged connection between this absolute right to life and a derivative, but equally absolute, right to the ownership of property. We shall argue that there is no such connection, and that the individualist's case against health care rights founders on this glaring non sequitur.

Suppose that we grant the existence of a right to life and a derivative right to produce goods in support of life. Does it follow that we also have an absolute and inviolable right to dispose of these goods in any way we see fit? No, it doesn't. At the very most, the individualist's argument shows that we have a right to control those goods that are necessary for life, such as food, shelter, clothing, and so on. But supposing that these basic needs were met and that we had enough to live on, would we have an absolute right to control whatever *surplus* goods we happened to accumulate by dint of hard work, gifts, inheritance, or dumb luck? The answer is no—not if the right to *life* is advanced as the sole justification of property rights. Any surplus goods we produced could justly be alienated from us in order to secure a worthwhile social purpose.

Because the individualist focuses exclusively on the isolated individual and his or her life, he does not appreciate the importance of social relations for the theory of rights. Although there may be some so-called natural rights that can be understood apart from a social context, most rights are best described as social or political—that is, as rights that are claimed, argued for, and vindicated within the body politic. Such rights are based on appeals to liberties and values that people consider essential for leading a good life.[9] Of course, the goods necessary for a full, satisfactory life will vary from society to society. Take the value of privacy, for example. In our society we tend to value pri-

vacy very highly—so much so that we have trouble imagining what friendship and love would be like if we couldn't exclude others from our company or prevent them from knowing certain things about us.[10] But we can nevertheless imagine societies that would be much more open than our own, wherein privacy would have much less importance.

This example nicely illustrates the socially relative origin and nature of rights. Whether or not we assign people rights over certain goods will depend on the role played by these goods in the life of our society. Since we value privacy as the cornerstone of social relations, we grant it the status of a right; but a society that had little use for privacy could make little or no sense of a right to have it. Thus, rights are generated within a social context, and systems of rights should be viewed as mechanisms for adjusting the competing claims of individuals for certain forms of liberty and control over certain goods. Because medical individualism sees only the isolated individual and his or her life, it cannot account for the way rights come to be recognized within society.

Likewise, the individualist's omission of social relations prevents him from establishing a criterion for limiting the scope of rights. How far should rights extend? How much control over goods should people be allowed to have? As long as the individualist ignores the social nature of rights, he cannot begin to answer these questions, since they necessarily involve adjusting and reconciling the competing claims of many individuals on limited resources. The individualist's only available move is simply to declare that "rights cannot exist in conflict,"[11] that his rights to property are absolute—that is, not subject to limitation by any conceivable social goal. Once we deprive the individualist of this gambit by revealing the gaping hole in his argument for absolute property rights, we see that he can be of no help in determining the legitimate extent or scope of rights.

For purposes of discussion (not proof) we will advance the notion that rights should be limited if they grant some persons excessive control over the lives and well-being of others.[12] Admittedly, this criterion requires considerable refinement, not to mention an argument. We certainly would have to know more about what would constitute "excessive" control. Yet some such criterion surely lies behind the stock Lockean example of someone gaining complete control of a formerly public water supply in a desert community.[13] Would such an acquisition be just? Does the new owner have the right to dispense the water as he or she sees fit? Most of us would deny the owner that right, even if he or she acquired title to the water supply fairly and squarely, without coercing or defrauding anyone. And we would most likely base our denial on the fact that such a right to control the water supply would give the owner excessive or unacceptable control over the lives of others who depend on the water for their life and health.

This, of course, brings us to the status of physicians in a libertarian paradise. It is likely that a system of absolute property rights over medical services would have the effect of protecting the liberties of physicians in such a way that it would also give them an excessive degree of power over the lives and health of others. If this turned out to be the case, then the individualist's claim to complete control over the allocation of medical care would run afoul of our suggested criterion for limiting the scope of rights.

Social Realities of the Medical Profession

As we have seen, the medical individualist claims that medical skills and services should be considered the private property of physicians. Since individuals obtain these skills through their own efforts, so the argument runs, they should be able to dispose of them as they see fit. What is true for the baker and candlestick maker is also true for the doctor.

The trouble with this claim is that it is simply preposterous. His head buried securely in the sand, the individualist refuses to acknowledge the massive *public* investment in medical education, hospital construction, and research. Because of the enormous price tags attached to each of these items, public support has assumed an indispensable role in the allocation of health care. These economic facts of life are so well known that we will not dwell on them. Suffice it to say that they are impossible to square with the individualist's romantic portrait of the rugged physician doing it all on his own and then claiming it all as his own private property. Were it not for the infusion of tax dollars into our medical system, our rugged medical individualist would never have gotten an edu-

cation, would have no hospital in which to practice, and would have substantially less knowledge on which to base his practice. Whether he admits it or not, the individualist physician is caught up in a web of social and economic entanglements, apart from which he could neither develop nor practice his medical skills.

These social and economic facts effectively refute the medical individualist's attempt to classify his medical skills and services as his private property. Those skills were developed with public assistance and are thus not properly subject to the exclusive control of physicians.

Freedom and Autonomy in the Medical Marketplace

Our third criticism of medical individualism concerns the fate of freedom and autonomy in the free medical market. As we have seen, freedom and autonomy are the individualist's supreme values. He contends that these values can flourish only in the atmosphere of a free-market economy—one in which sellers are free to dispose of their goods and services as they see fit, and buyers are free to spend their money on the kind of services they explicitly desire. We will argue that the individualist overestimates the liberating potential of the free market concept and that the economic system favored by medical individualists would actually pose a grave threat to the individualist's own ideals of freedom and autonomy.

The individualist advocates a laissez-faire, free-market version of capitalism because he wants to maximize the individual's control over his or her own life. The maximization of autonomy thus demands the minimization of imposed obligations and restrictions on financial transactions. Individualists often argue that a right to health care would unjustifiably curtail the physician's right to treat whomever he or she pleases, at whatever price he or she chooses to exact. Such a right would also limit the patients' right to spend health care dollars the way they see fit without governmental interference. According to individualism, the right to health care poses a threat to the freedom of physicians and patients alike. A system of absolute property rights maximizes the values of liberty and autonomy and is thus morally preferable to alternative systems that, in varying degrees, limit freedom and violate human dignity.

The most objectionable feature of this free-market approach to health care allocation is that it makes our freedom and autonomy completely contingent upon the strength of our bargaining position within the free market.[14] Our competitive ability can be severely compromised or entirely wiped out by factors beyond our control. Negligent parents, for example, can fail to shield their children from the effects of catastrophic disease. If the parents are unable to pay for medical costs, and if no one else is willing to donate money or medical services, there would be no remedy in a free-market economy. The sins or negligence of parents would be visited upon their children. Through no fault of their own, many children would enter the game of exchange and acquisition with irremedial inequalities. Justice would seem to require some mechanism for neutralizing the transmission of familial advantages and disadvantages to children.

The freedom and autonomy of adults would also be vulnerable in the free market. A drastic shift in the balance of supply and demand for certain services could easily destroy our bargaining position. Through no fault of our own, we could be rendered destitute and unable to pay for basic medical care. At such a juncture, we would obviously exercise precious little control over our own lives. We would not find much consolation reflecting on the alleged maximization of freedom and autonomy on the free market, for our freedom would be nonexistent. In a market governed only by free competition, the liberty and autonomy of the individual would be threatened constantly by events beyond his or her control. Once our bargaining position was undermined, our ability to control our lives would be imperiled. Since freedom and autonomy are worth little without health, the individualist's preferred economic system would thus tend to undermine his own supreme values.

The libertarian paradise would thus enhance the freedom of some while destroying the freedom of others. If the medical individualist is honestly concerned with the maximization of freedom, he would have to compare the extent to which freedom would be limited by a right to health care *and* by a free market. He would then have to explain why the loss of liberty in a free market would be preferable to that incurred within a system guaran-

teeing the right to health care.[15] The failure of medical individualists even to consider this question prompts us to suspect that their spirited defense of freedom is, at bottom, a mere smoke screen for the vested interests of a privileged class of physicians.

In any case, we doubt that the loss of freedom entailed by a right to health care would be quite as great as the medical individualists would have us believe. Just as they underestimate the costs to freedom inherent in their conception of laissez-faire capitalism, so they overestimate the probable constraints on physicians in a regime guaranteeing the right to health care. Recall that the individualist defines the right to health care as the right to control the skills and services of a physician. From this flawed definition, he correctly infers that the right to health care is a threat to his liberty, autonomy, and human dignity. But does the right to health care necessarily violate the physician's rights? Is the embattled individualist's talk of enslavement a genuine cause for concern, or is it rather a red herring drawn across our path?

We smell red herring. There is no necessary conflict between the right of persons to health care and the right of physicians to liberty. Those who insist on the inevitability of conflict between these rights misplace the duty to provide care. Opponents of the right to health care often assume that the duty corresponding to this right must reside in the individual physician. But we need not assume this. We can just as easily assume that the duty to provide care would reside in the political organs of society. On this view, society, not the individual physician, should bear the cost of realizing the right to health care. If we displace the duty to provide care in this fashion, the alleged conflict between the right to health care and the physician's right to liberty disappears. A public system guaranteeing the right to health care would obtain the services of qualified providers, not by enslaving doctors, but rather by providing them with pay and other incentives—the same way we attract teachers for our system of public education.

III. False Starts toward a Right to Health Care

Ironically, two separate arguments in favor of a right to health care can be discerned amid the rubble of the individualist's model. One is based on the right to life, the other on physicians' acceptance of public funds. Although there is something to be said for each approach, we shall see that neither suffices to establish an adequate standard of health care as a basic right to all persons.

Rights to Life and Health Care

The individualist's first and most important argument hinged on the fact that each person is a living human individual and, as such, deserves the right to live. From this basic right followed the right to produce and control values necessary to sustain life. This argument can be turned around to produce a limited right to health care. It can be argued that if we have a right to life, then we should have rights to those things that are necessary for life. Since food (bread?), shelter, clothing—and health care—are all values necessary for life, then, according to the individualist's logic, we should have the right to obtain these goods regardless of our ability to pay for them.

Similar objections from two different quarters can be lodged against this argument. First, advocates of a right to health care will object that it does not go far enough. At most, arguments premised on the right to *life* can only secure a right to *lifesaving* medical care. Such a right would guarantee treatment for the critically ill and injured, but it would exclude the vast majority of patients whose medical needs are serious, but not absolutely critical. Thus, the limits of the right-to-life gambit cut both ways: the medical individualist used it to establish absolute property rights, but all he got in the end was a right to property necessary for life. Advocates of the right to health care could likewise ground their proposals for comprehensive health services on the right to life, but they would salvage only a right to lifesaving care. Both approaches are subverted by their reliance on a common premise—the right to life—that simply cannot carry the required freight.

A second, related objection comes from the medical individualist, who argues that having a right to life does not give us a right to whatever we need in order to live—especially if the goods we require are already *owned* by others. Suppose you are subdued and kidnapped by the society of music lovers in order to save the life of a famous violinist suffering from end-stage kidney failure.[16]

You wake up to discover the violinist sitting next to you in bed, his kidneys plugged into yours. Granted, the violinist has a right to life, but does he have a right to the use of your kidneys? If we consult our moral intuitions, most people would probably reply, "No, this violinist might well have the right to life, but he certainly doesn't have the right to use *my* kidneys—even if he cannot live without them." Likewise, even supposing we have a right to life, and that health care is necessary for continued life, we do not have a right to health services that belong as a matter of right to others.

But as we have seen, the individualist's claim that health services are the private property of physicians is itself vulnerable to attack. In our critique of medical individualism we noted the extent to which the institutions of modern medicine are subsidized by the taxpayer. The moral significance of the physician's acceptance of public funds is twofold. We have already shown how the individualist physician's economic dependency on the public negates his contention that health skills and services are his exclusive private property. We will now investigate a more constructive interpretation of the physician's economic dependency.

Health Care as a Special Right

It can be argued that the physician's acceptance of public aid generates a set of corresponding rights and obligations.[17] The recipients of the public investment in medical education, research, and hospital construction owe a debt of some kind to the public. In spite of the protests of the medical individualist, this debt has not been foisted on physicians in violation of their moral autonomy. On this account, the physician's obligation to the public derives from his or her free decision to accept the benefits of public support. This *act* of the health professional creates the duty to the public.

Conversely, it can be maintained that the providers of this public support—the taxpayers—have a *right* to medical services corresponding to the physician's *obligation*. If the taxpayers contribute vast sums of money to underwrite our health care system, it follows that they have a right to expect something in return. In the parlance of contemporary social philosophers,[18] this is a "special right" that exists not simply by virtue of one's status as a human being—as do "general rights"—but rather by virtue of the fact that specific individuals have entered into a particular kind of social relationship. The physician's obligation to provide health services to the public, and the public's corresponding right to those services, is thus grounded on the fact that both parties have freely entered into certain economic and social relations of interdependence. If the public decided to cash in on its right by claiming the services of physicians, it could do so without violating their moral integrity and autonomy. Provided such claims are not excessive, physicians would have no right to complain since they voluntarily accepted the benefits and corresponding burdens of public assistance.

This is an attractive and popular argument. The claim that the acceptance of social benefits imposes social obligations appeals to our sense of justice and fair play. On closer inspection, however, this relationship between social benefits and burdens becomes increasingly obscure. In the first place, we note that accepting public assistance generates no clear-cut duties. To what extent would individual physicians be obligated to society? Should they devote their services to the public for one year? Two? Three? Would wealthy physicians and nurses who pay their own way through school incur less of a public obligation than their less well-heeled colleagues? Would they be allowed to pay off their public debt in cash, instead of in medical services? Suppose that physicians owned all the hospitals and financed their own educations. Would defenders of the right to health care simply sputter "Pardonnez-moi" and desert the field? We think not.

Conversely, the extent of this special right to health care is equally obscure and problematic. If health care is a special right, then it must be generated by the voluntary acts of definite persons. Who are these individuals entitled to health care, and what must they do to deserve it?

The argument under consideration asserts that the *public* is entitled to the services of physicians because it pays the bills for modern medicine. But precisely who is the public? According to the theory of special rights, would not the public consist only of those who actually contribute in some way to the medical enterprise? If so, it would follow that the poor who pay no taxes (except on sales) would have less right to health care

than those wealthy and middle income families that bear the brunt of public support for medicine. This would certainly be an ironic outcome for the advocates of health care rights. Those who needed this right the most would have the least claim to it, while those who needed it least would have the strongest right. Obviously, an unacceptable result.

IV. Positive Approaches to a Right to Health Care

The position that there is a right to health care turns out to be intricate and difficult to defend on the basis of positive arguments in its favor. Most arguments in defense of a right to health care treat it as a means to achieve an end. It may be seen as a means to realize a right to health,[19] or a duty to care for one's health.[20] Other ends sought by a right to health care are normally seen as linked to its role in maintaining and restoring health, which is seen as directed to even further ends, such as autonomy,[21] equal opportunity,[22] or one's duty to labor for social good.[23] At first, this means-to-end approach seems natural. Few see physicians for pleasure; health care is not ordinarily desired as an end in itself. The well-established rights—to life, liberty, food, shelter, pursuit of happiness—seem more directly valuable because they are satisfying in themselves. But, we do not list any of these as rights simply because they are deeply enjoyable, or because they are ends in themselves. We defend them as rights because they also have a place in a scheme of life. For the overwhelming majority of people, a full spectrum of these rights must be realized in order to lead a good or happy life, however much that conception may vary from person to person in other respects.

Talk of "rights" helps us to set a standard by which we assess the ability of a social organization to support or encourage a good life for each of us in a just way. Being part of a short list of elements necessary to leading a good life is the main reason for treating health care as a right. But rights have a way of proliferating. In certain circumstances additional things are needed (such as transportation) to get what we have a right to (such as pursuit of happiness). Since we tend to think that if I have a right to something, it follows that I have a right to the means to obtain it, the list of rights has a potential for explosive growth. However, we have argued earlier in this paper that this is not a sound principle. Thus, we think that a fairly clear area of rights can be distinguished from a fairly clear area of nonrights. To take this position plausibly, however, one must recognize its vagueness. We would expect there to be a broad disputable gray area of goods that may or may not be seen as basic.

Moreover, not every element basic to a good life should appear on such lists. Only if the needed item is subject to distribution and control by organized social means in a developed society should we have occasion to mention it. For example, although breathing is important to a good life, we do not list a "right to breathe," partly because we have no effective means of allocating breathing, and partly because it is usually well-managed on an individual basis. What appears on the basic list need not be seen as fixed by nature; new forms of production and new forms of living may change its content. Lest the list cease to characterize anything basic, however, it is important that it be a short one.

From this perspective on what we should say we have a right to, there is no difficulty about placing a right to health, as contrasted with a right to health care, on the list of desiderata. One can find many authorities who defend the cliché that health is a basic good in life. As health declines, so does the appeal of autonomy, property, and the pursuit of happiness. Nevertheless, two objections must be met: first, that people often act as though they do not really desire health, and second, that people desire many things, among them health, so that health must compete with a wide range of desires to be called a "right." These objections are worth considering, but only because the psychology of health management is important to understanding how best to support health. The desire for health is not like the desire for other goods, especially consumer goods. Even though people weaken their health for other ends, they can rarely be charged with *desiring* ill health or seeking it out. For most consumer goods, there are times we desire to be without them. Although worth exploring, these objections are largely irrelevant. To commit oneself to a set of rights is not to choose a set of "more valued" desires in competition with others. It is to choose those that interact in an important way with other desires, such that were the objects of these desires absent, most other desires

that people have would be unrealizable because their objects would be either unobtainable or undesirable.

In saying that a right to health falls squarely in the realm of basic rights, we should not be misunderstood. Health is not a good or commodity that can be provided by society. It is a condition—like life, liberty, or happiness. Society cannot make people healthy; much depends on their personal life styles. A right to health simply creates an obligation to produce social conditions conducive to health and to personal health maintenance. Society need make people healthy no more than it need make people morally virtuous. Indeed, health as a virtue or duty[24] represents an ideal of health beyond the lesser standard on which a wide range of goods depend. It is unclear whether we should make sacrifices to encourage this virtue, but we should not make the mistake of assuming that a society in which it is easy to be unhealthy, such as one in which it is difficult to exercise and easy to consume a poor diet, is necessarily more libertarian than one in which it is easy to maintain healthy personal habits. Moreover, a right to health ought to protect us from conditions destructive to health created by social activities.

There is a deeper problem with the arguments for the rights to health and to health care. Rights talk confuses allocation of goods with allocation of power to obtain goods. Usually, two things are being said when I claim a "right to *X*": that "*X* should be available to me," and that "I am entitled to control *X*." These are partially independent considerations. It would be possible to guarantee health care to all who need it, but to have someone else determine who needs it. We are entitled to own property, but the uses to which we may put it are subject to limitation. A person may be put in a position to control a good, but be required to control it for public benefit, as in professional licensure.

This lack of clarity creates difficulties for arguments in defense of the rights to health and to health care, by restricting too much our conceptions of what social institutions might be used to realize these rights. Depending on how they are organized, social factors affecting health may emphasize benefits to whole populations, or benefits to individuals. They may consist in services over which individuals have much control, such as physicians' services, or which may be widely distributed without much individual attention, such as clean air. Health maintenance need not be seen as a service at all, but as a set of social conditions making it easy to lead a healthy life consistent with other satisfactions. The use of rights language makes it hard to see these possibilities because it assumes that individuals ought to control these goods, when many of the most important social goods, such as basic production, cannot be readily controlled by individuals.

The argument for the right to health care, being one step more complex, is even more problematic than the argument for a right to health. To the medical individualist, health care is an oddity on the list of rights because it costs money—it must be *provided*, while life and liberty are merely *protected* and not actively provided. This, however, should not distress us. Although it must be provided, health care may nevertheless still be necessary to any form of good life. Moreover, the monetary differences between provided and protected goods is not so sharp as it first seems. Liberty is protected by laws, political processes, the police, and the courts. These jobs are done by people with marketable skills in need of survival, just like physicians. In some sense, liberty must be provided like any other social good.

The strongest argument for a right to health care, as modeled on the present system of delivery, does not rest on its role in maintaining overall public health status. As we argued above, health care is not a dominant factor in public health status. Indeed, we should avoid sacrificing other health factors in order to provide health care. For example, it would be ironic, as well as harmful and unjust, for us to be unable to afford adequate nutrition in order to maintain a complex health care system. Instead, the argument for a right to health care services rests mainly on the benefit they provide to particular individuals in particular need. When an individual gets sick, that person's autonomy and welfare are threatened. Like the protective functions of fire departments and police, the right to health care can be defended in relationship to individual health restoration.[25]

This argument does not support an extensive health care system. We get well from most ailments anyway, and do not need health services in recovering from them. The incurable illnesses

likewise pass from the scope of the right to health care. The argument has an unfortunately strong focus on the "cure" functions of medicine. Unfortunate, because health care services do many things. Apart from cure, they play a minor role in health maintenance and disease prevention (for example, polio vaccination); palliate, aid, comfort, and protect during illness (for example, morphine for pain, nursing care); and restore function without restoring health (for example, dialysis, eyeglasses, prosthetics).

The last two functions deserve more attention in right to health care arguments than they usually get. Functional restoration and protection can be defended by means-end arguments in a manner analogous to a defense of a right to health. Palliation and comfort—the "care" functions—could also be defended as part of our conception of basic goods, and therefore be treated as things to which we have a right. As goods in themselves, they fall squarely under a humane conception of social life and can be defended as rights more readily than many liberties and consumer goods. Many of them need not even be provided by professionals, and some may be better managed outside the health care system.[26] However, since it is unclear whether other goods depend on these, it is unclear whether we can defend a right to these by the means-ends arguments. An uncomforted illness could be a psychologically incapacitating disaster for some; others may prefer to be ill alone. Insofar as these goods are independent of other goods, the defense of a right to them is weakened, unless a commitment to humane care of the ill and helpless is so widespread as to make it an important part of almost any conception of a good life. We take comfort in thinking that aid in extremity seems desirable even to those willing to risk their health for other ends.

In this quick look at positive arguments in defense of a right to health care, we have tried to stick closely to the question of what we have a right to. We think these arguments are too loose at this point to require, or to bear, a carefully calculated exposition. In order to keep the outline clear, we have avoided some of the issues we think important in understanding the right to health care argument, such as questions as to the extent of health care services,[27] standards of public health, appropriate principles of justice for distributing health care,[28] and the extent to which other things ought to be sacrificed for the sake of health care. These, however, must also be developed in order to give a full defense of a right to health care. It is an irony of the debate over medical individualism that if health is to be our goal, it may be easier to establish a right to a decent standard of living than to establish a right to health care.

Notes

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