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## **A Right to Health Care**

by

**Pat Milmo McCarrick**

*(Scope Notes, current awareness guides to a topic, usually contain primarily recent bibliographic citations. Because the idea of a national right to health care has been under discussion for many years, and still no laws or societal obligations guaranteeing health care rights for everyone exist, this paper includes many citations to early works along with new material.)*

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).

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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 ETHI-**

**CAL 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

President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research. **SECURING ACCESS TO HEALTH CARE: THE ETHICAL IMPLICATIONS OF DIFFERENCES IN THE AVAILABILITY OF HEALTH SERVICES**. Volume One: **Report**. 223 p. Volume Two: **Appendices—Sociocultural and Philosophical Studies**. 305 p. Volume Three: **Appendices—Empirical, Legal, and Conceptual Studies**. 418 p. Washington: Government Printing Office, March 1983. (Out of print at GPO; facsimiles are available from the National Technical Information Service, Springfield, VA 22161, document numbers PB 83236752, PB83236760, and PB83236778.

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

American College of Physicians. **Universal Access to Health Care in America: A Moral and Medical Imperative**. Editorial. *Annals of Internal Medicine* 112(9): 637-639, 1 May 1990.

"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."

National Conference of Catholic Bishops. **Health and Health Care: A Pastoral Letter of the American Bishops**. November 16-19, 1981. *In: MEDICAL ETHICS: SOURCES OF CATHOLIC TEACHINGS*. Kevin D. O'Rourke and Philip Boyle, eds. St. Louis: Catholic Health Association of the United States, 1989, pp. 193-194.

"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."

Pan American Health Organization. **A Human Right to Health Under International Law**. *Bulletin of the Pan American Health Organization* 24(4): 624-628, 1990.

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."

United Nations. **Universal Declaration of Human Rights, Article 25, 1948**. *Bulletin of the Pan American Health Organization* 24(4): 625, 1990.

“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.”

World Health Organization. **Preamble to the Constitution.** *In: THE FIRST TEN YEARS OF THE WORLD HEALTH ORGANIZATION.* Geneva: The Organization, 1958. 459 p.

“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

Bayer, Ronald; Caplan, Arthur L.; and Daniels, Norman. **IN SEARCH OF EQUITY: HEALTH NEEDS AND THE HEALTH CARE SYSTEM.** The Hastings Center Series in Ethics. New York: Plenum Press, 1983. 240 p.

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.

Bole, Thomas J., and Bondeson, William B., eds. **RIGHTS TO HEALTH CARE.** Philosophy and

Medicine Series, Volume 38. Dordrecht, The Netherlands: Kluwer Academic, 1991. 380 p.

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, Daniel. **WHAT KIND OF LIFE: THE LIMITS OF MEDICAL PROGRESS.** New York: Simon and Schuster, 1990. 318 p.

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, Norman. **JUST HEALTH CARE.** Studies in Philosophy and Health Policy. Cambridge, England: Cambridge University Press, 1985. 245 p.

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.

Dougherty, Charles J. **AMERICAN HEALTH CARE: REALITIES, RIGHTS, AND REFORMS.** New York: Oxford University Press, 1988. 227 p.

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.

Dworkin, Gerald; Bermant, Gordon; and Brown, Peter G., eds. **MARKETS AND MORALS**. Washington: Hemisphere, 1977. 206 p.

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.

Engelhardt, H. Tristram, ed. **RIGHTS TO HEALTH CARE**. *Journal of Medicine and Philosophy* 4(2): 113-215, June 1979.

Calling the phrase "a right to health care" a cliché, 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.

Fuenzalida-Puelma, Hernan L., and Connor, Susan Scholle. **THE RIGHT TO HEALTH IN THE AMERICAS: A COMPARATIVE CONSTITUTIONAL STUDY**. Washington: Pan American Health Organization, 1989. 716 p.

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, Paul T. **MEDICAL COSTS, MORAL CHOICES: A PHILOSOPHY OF HEALTH CARE ECONOMICS IN AMERICA**. New Haven: Yale University Press, 1983. 260 p.

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, Paul T. **STRONG MEDICINE: THE ETHICAL RATIONING OF HEALTH CARE**. New York: Oxford University Press, 1990. 234 p.

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."

National Leadership Commission on Health Care. **FOR THE HEALTH OF A NATION: A SHARED RESPONSIBILITY**. Ann Arbor: Health Administration Press, 1989. 206 p.

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.

Shelp, Earl E., ed. **JUSTICE AND HEALTH CARE**. Philosophy and Medicine Series, Volume 8. Dordrecht, The Netherlands: D. Reidel, 1981. 238 p.

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, Henry A. **MEDICAL ETHICS: EVOLUTION, RIGHTS AND THE PHYSICIAN**. Boston: Kluwer Academic, 1991. 491 p.

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.

Veatch, Robert M., and Branson, Roy, eds. **ETHICS AND HEALTH POLICY**. Cambridge, MA: Ballinger, 1976. 332 p.

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, Robert M. **THE FOUNDATIONS OF JUSTICE: WHY THE RETARDED AND THE REST OF US HAVE CLAIMS TO EQUALITY**. New York: Oxford University Press, 1986. 210 p.

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, Allen. **The Right to a Decent Minimum of Health Care**. In: **SECURING ACCESS TO HEALTH CARE: THE ETHICAL IMPLICATIONS OF DIFFERENCES IN THE AVAILABILITY OF HEALTH SERVICE**. Volume Two: **Appendices — Sociocultural and Philosophical Studies**, pp. 208-38. U.S. President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research. Washington: Government Printing Office, 1983.

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, Daniel. **Biomedical Progress and the Limits of Human Health**. In: **ETHICS AND HEALTH POLICY**. Robert M. Veatch and Roy Branson, eds. Cambridge, MA: Ballinger, 1976, pp. 157-65.

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, Alexander Morgan. **United States of America.** *In: THE RIGHT TO HEALTH IN THE AMERICAS: A COMPARATIVE CONSTITUTIONAL STUDY.* Hernan L. Fuenzalida-Puelma and Susan Scholle Connor, eds. Washington: Pan American Health Organization, 1989, pp. 498-520.

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, Larry R. **Principles of Justice: Rights and Needs.** *In his: RATIONING HEALTH CARE IN AMERICA: PERCEPTIONS AND PRINCIPLES OF JUSTICE.* Notre Dame, IN: University of Notre Dame Press, 1987, pp. 70-103.

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, Frank H., and Yarborough, Mark. **The Justification of a Health Policy Based on Rights and Justice.** *In their: MEDICINE AND MONEY: A STUDY OF THE ROLE OF BENEFICENCE IN HEALTH CARE COST CONTAINMENT.* Contributions in Medical Studies Series, Number 30. New York: Greenwood Press, 1990, pp. 45-64.

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.

Sade, Robert M. **Medical Care as a Right. A Refutation.** *In: CROSS CULTURAL PERSPECTIVES IN MEDICAL ETHICS: READINGS.* Robert M. Veatch, ed. Boston: Jones and Bartlett, 1989, pp. 275-310. (Reprinted from *New England Journal of Medicine* 285(23): 1288-1292, 2 December 1971).

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.

Singer, Peter. **Freedoms and Utilities in the Distribution of Health Care.** *In: ETHICS AND HEALTH POLICY.* Robert M. Veatch and Roy Branson, eds. Cambridge, MA: Ballinger, 1976, pp. 175-193.

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.

Steinfels, Peter. **The Right Health Care and the Anxiety of Liberalism: A Reply to Daniel Callahan.** *In: ETHICS AND HEALTH POLICY.* Robert M. Veatch and Roy Branson, eds. Cambridge, MA: Ballinger, 1976, pp. 167-174.

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

Annas, George J. **AIDS, Judges, and the Right to Medical Care.** *Hastings Center Report* 18(4): 20-22, August-September 1988.

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.

Barnet, Robert J. **Catholic Social Teachings and American Health Care.** *Linacre Quarterly* 58(2): 70-78, May 1991.

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.

Barnet, Robert J. **Health Care in the United States: Rights and Reality.** *America* 160(11): 268-271, 25 March 1989.

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, Ronald. **Ethics, Politics, and Access to Health Care: A Critical Analysis of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research.** *Cardozo Law Review* 6(2): 303-320, Winter 1984.

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.

Bayer, Ronald; Callahan, Daniel; Caplan, Arthur L.; and Jennings, Bruce. **Toward Justice in Health Care.** *American Journal of Public Health* 78(5): 583-588, May 1988.

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.

Beauchamp, Tom L., and Faden, Ruth R. **The Right to Health and the Right to Health Care.** *Journal of Medicine and Philosophy* 4(2): 118-131, June 1979.

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."

Blendon, Robert J.; Edwards, Jennifer N.; and Hyams, Andrew L. **Making the Critical Choices.** *Journal of the American Medical Association* 267(18): 2509-2520, 13 May 1992.

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, Dennis. **The Rights Debate.** *Health*

*Progress* 71(5): 48-51, 74, June 1990.

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, Baruch A. **The President’s Commission: The Need to Be More Philosophical.** *Journal of Medicine and Philosophy* 14(4): 369-383, August 1989.

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.

Caplan, Arthur L., and Priester, Reinhard. **For Better or Worse? The Moral and Policy Lessons of Minnesota’s HealthRight Legislation.** *Kennedy Institute of Ethics Journal* 2(3): 201-215, September 1992.

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.

Curran, William J. **The Constitutional Right to Health Care — Denial in the Court.** *New England Journal of Medicine* 320(12): 788-789, 23 March 1989.

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.

Dougherty, Charles J. **The Right to Health Care: First Aid In the Emergency Room.** *Public Law Forum* 4(1): 101-128, 1984.

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.”

Drane, James F. **Justice Issues In Health Care Delivery.** *Bulletin of the Pan American Health Organization* 24(4): 566-578, 1990.

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, Rashi. **Entitlement to Health Services Reappraised.** *Bulletin of the New York Academy of Medicine* 66(4): 319-328, July-August 1990.

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.

Fleck, Leonard M. **Just Health Care (I): Is Beneficence Enough?** *Theoretical Medicine* 10(2): 167-182, June 1989. **Just Health Care (II): Is Equality Too Much?** *Theoretical Medicine* 10(4): 301-310, December 1989.

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.

Fried, Charles. **Equality and Rights In Medical Care.** *Hastings Center Report* 6(1): 29-34, February 1976.

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, Robert D. **WE THE PEOPLE: Our Inalienable Right to Quality Health Care.** *American Pharmacy* NS28(12): 19-21, December 1988.

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.

Hayry, Matti, and Hayry, Heta. **Health Care as a Right, Fairness and Medical Resources.** *Bioethics* 4(1): 1-21, January 1990.

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, Gary. **The Right to Health Care and the State.** *Philosophical Quarterly* 33(132): 279-287, July 1983.

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.

Kaufmann, Caroline L **The Right to Health Care: Some Cross-National Comparisons and U.S. Trends in Policy.** *Social Science and Medicine, Part F, Medical Ethics* 15F(4): 157-162, December 1981.

The differing evolution of the concept of a right to health care in the United States, Great Britain, and Russia is described and compared. Toleration 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.

Kinzer, David M. **Universal Entitlement to Health Care: Can We Get There from Here?** *New England Journal of Medicine* 322(7): 467-470, 15 February 1990.

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.

Lundberg, George D. **National Health Reform: An Aura of Inevitability Is upon Us.** *Journal of the American Medical Association* 265(19): 2566-2567, 15 May 1991.

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.”

Mackler, Aaron L. **Judaism, Justice, and Access to Health Care.** *Kennedy Institute of Ethics Journal* 1(2): 143-161, June 1991.

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.

McIntyre, Ray V. **“Right” or “Privilege” to Medical Care?** *Postgraduate Medicine* 83(1): 226, 228, 230, January 1988.

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, David. **Rationing Health Care: Public Policy and the Medical Marketplace.** *Hastings Center Report* 6(1): 34-37, February 1976.

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.

Moulding-Johnson, Erik. **The Right to Adequate Medical Care.** *Columbia Human Rights Law Review* 20(2): S3-S17, Spring 1989.

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

Pellegrino, Edmund D. **The Social Ethics of Primary Care: The Relationship Between a Human Need and an Obligation of Society.** *Mount Sinai Journal of Medicine* 45(5): 593-601, September-October 1978.

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. **Pacem in Terris.** Encyclical. April 1963. *The Pope Speaks* 9(1): 15-17, Summer 1963.

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.”

Porter, Susan. **Does Everyone Merit Health Care?** *Ohio Medical Journal* 83(1): 16-18, January 1987.

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.

Roemer, Ruth. **The Right to Health Care — Gains and Gaps.** *American Journal of Public Health* 78(3): 241-247, March 1988.

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.

Ruddick, William. **Why Not a General Right to Health Care?** *Mount Sinai Journal of Medicine* 56(3): 161-163, May 1989.

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, Abigail. **Access to Health Care: Is It a Basic American Right?** *Washington Post Health* 7(6): 6, 5 February 1991.

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.

van der Vyver, J. D. **The Right to Medical Care.** *Medicine and Law* 7(6): 579-583, 1989.

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, Jan. **Separate Is Not Equal In Health Care.** *Pharos* 55(1): 20-21, Winter 1992.

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

**Compare and Contrast: Quotes From the Platforms.** *New York Times*: 26, 16 August 1992.

Fox, Daniel. **The History of Responses to Epidemic Disease in the United States since the 18th Century.** *Mount Sinai Journal of Medicine* 56(11): 223-229, May 1989.

Pawlson, L. Gregory; Glover, Jacqueline J.; and Murphy, Donald J. **An Overview of Allocation and Rationing: Implications for Geriatrics.** *Journal of the American Geriatrics Society* 40(6): 628-634, June 1992.

Smith, Mark D.; Altman, Drew E.; Leitman, Robert; et al. **Taking the Public’s Pulse on Health System Reform.** *Health Affairs* 11(2): 125-133, Summer 1992.

(Scope Note 20, **A Right to Health Care**, was prepared by Pat Milmoie McCarrick, a reference librarian at the National Reference Center for Bioethics Literature.)

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