Commentaries

Justice Issues in Health Care Delivery

JAMES F. DRANE[1]

When one speaks of freedom, or truth, or love, people have a common-sense understanding of what the terms mean. The same is not true of justice. Even in Aristotle's time the term justice communicated more ambiguity than clarity. One reason is that justice sometimes refers to the whole of one's moral life (the just man), while at others it is taken more narrowly as referring to what is lawful. In the context of health care, justice has still another meaning, this being what philosophers call "distributive justice," fair distribution of scarce goods throughout a community.

For all its pretense of clarifying complexities, philosophy has not yet succeeded in clearing up the muddles surrounding the term justice and its different meanings. Despite this, the topic of justice in health care has been at the center of medical ethics concerns for many years. For medical ethicists, the decade of the eighties was dominated by debates over allocation of scarce resources and distributive justice, and this is not expected to change in the 1990s. Indeed, if the next decade in medical ethics is thought of in musical terms, we can foresee that the justice debate will be the unifying theme, with differing theories of justice creating a point-counterpoint refrain that will be repeated no matter what issues are considered.

HEALTH CARE DELIVERY BECOMES A PROBLEM

Every country has justice problems in the sense of difficulties achieving just distribution of scarce health care. The United States spends US$600 billion a year on health care, and even those of us who cannot comprehend such figures know that is a lot of money. The health insurance costs of an individual American can easily reach US$400 a month, while the annual cost of private health insurance coverage for a family may exceed US$12,000.

As this suggests, even rich nations find health care costs spiralling out of control and are compelled to wrestle with justice questions as competing claims exceed available resources. Technology, third party payers, physicians' specialization, patient expectations, the number and type of hospitals, and the structure of financing systems all push health care costs higher and force hard thinking about what justice requires in the distribution of health care services. And what is true of wealthy nations regarding the affordability of health care costs is even more true of struggling and developing ones.

As pressure mounts on health care delivery systems, demands for restructuring and reform grow louder. Indirectly, these demands are also calls for hard thinking about philosophic, political,

[1]Russell B. Roth Professor of Clinical Ethics, Department of Philosophy, Edinboro University of Pennsylvania, 109 Skytop Drive, Edinboro, Pennsylvania 16412, U.S.A.

economic, and ethical issues. One can go along with a properly functioning health system without critical reflection on its underlying principles; but when signs of collapse appear or restructuring is called for, hard thinking cannot be avoided.

A principal reason is that rebuilding or even reforming a threatened medical care delivery system has to take into consideration different claims about justice. When people responsible for health care institutions address the need for change, they have to consider competing health care models, and behind every model are theories about what makes health care delivery right or just or good. Hence, reflection about health care structure and resource allocation always involves questions about justice.

Such reflection is sometimes ideologic, in the sense of being driven by a set of fixed beliefs accompanied by strong emotions. Associated with ideologic solutions are familiar rhetorical phrases: "Doctors have a right to freedom of choice." "Patients have a right to health care." "Free enterprise and competition will solve medicine's problems." "In every advanced nation today the State provides health care for all." Most people who hold opinions about health care are not philosophers, but behind many strongly endorsed solutions lie philosophic theories. Hence, intelligent reflection or debate about health care is advanced by an understanding of background philosophic theories and the ethical terms associated with them.

THE ROLE OF JUSTICE THEORIES

Because contemporary cultures are pluralistic, no one set of values is accepted by all members, and no one theory of justice dominates. Consequently, different theoretical foundations support different models of health care organization. When health care policy-makers alter delivery systems, they often seize on some aspect of one or another justice theory in order to justify their decisions. This doesn't mean that philosophic theories of justice dictate how a particular culture will structure the concrete dimensions of its health care system; nevertheless, such theories do influence the organization of health care.

Socialist theory combined with concrete pressure from workers unhappy with a traditional health care system led to major structural changes during the nineteenth century in Germany and later in the Soviet Union. Pragmatic political considerations did as much as theory to restructure health systems toward what today we call socialized medicine, but theory played a part. Moreover, it still plays a part, even in the less theory-driven capitalist countries, most of which have come to adopt a modified version of the socialist model. As community after community, and nation after nation, faces continuing problems with health care, different political groups call for different types of restructuring and support their calls for change with arguments derived from theories of justice.

The reason such theoretical arguments are important is that human beings require justification for what they do. Theories of justice do not generate full-blown health care delivery systems, but they do provide all-important justifications for them, while supporting or condemning particular pragmatic solutions. Indeed, it may be that theories play their most powerful social role in criticizing and condemning that which is unjustifiable and unfair. It is within this context that theories of justice, political pressure groups, think-tanks with private agendas, and hard-nosed empirical studies on the consequences of different options all play a role in the challenging search for a work-

able health care delivery system that is also just.

TYPES OF JUSTICE THEORIES

Different theories of justice tend to agree about abstract classic formulae such as "*cuique suum*" ("give to everyone his due" or "treat like cases alike"). But such agreement produces no agreed-upon particular answers to questions about what really is due, or in what particular respect cases or people are equal. Competing theories of justice therefore attempt to specify what is everyone's due, what is basic equality, in order to be more specific and fill in the empty classic formulae with content. In this way material and concrete principles flesh out the formal and abstract ones.

These former material principles of justice either specify what is due everyone (in terms of benefits like health and burdens like taxes) or else specify how people are equal and how they should be treated equally. In other words, these principles establish the basic standards for distribution of burdens and benefits.

Of course, not all these material theories of justice agree with one another. At one end of the spectrum are principles like "to each according to individual need," and at the other are ones like "to each according to fair acquisition in a free market economy." And between the two extremes are theories that contain mixed elements. No one theory of justice convinces everyone, and yet elements of different theories enjoy very broad public support.

Libertarian Theories

Justice according to Libertarian theories is not an independent moral principle with separate content. There are separate moral principles like truth, fidelity, beneficence, etc., with their own meanings, but justice is reducible to the principle of autonomy or freedom. If the exercise of freedom (primarily economic) is protected and guaranteed, then according to these theories justice is done.

As this suggests, Libertarians question the very existence of a distributive justice that would presume to take any goods away from anyone who earned them fair and square: "The term distributive justice is not a neutral one. Hearing the term 'distribution,' most people presume that some thing or mechanism uses some principle or criteria to give out a supply of things. Into this process of distributing shares, some error may have crept. So it is an open question, at least, whether *redistribution* should take place; whether we should do again what has already been done once" (*1*).

Libertarian theories are often mixed with theories of merit or theories based on a person's contribution to society. They assume that hard work and ability ought to be rewarded, and that a person's freedom to decide how to spend these rewards ought to be protected. The exercise of a free market is assumed to do the distributive task and take care of distributive justice. Though free market distribution is deemed to create inequalities regarding access to health care, Libertarians do not consider these unjust and do not believe they should be remedied by tax plans or any other type of redistribution.

This reduction of justice to personal freedom involves an important assumption about individual responsibility for ill health. Libertarians frequently use examples provided by smokers, gluttons, and sky-divers to make their point. State involvement in health education is more acceptable to them than State-supported health care. They tend to emphasize the efficiency created by application of free-market principles to health care delivery. And they naturally prefer private health

insurance systems in which each person purchases the amount of health care he or she wishes, or can afford.

Libertarianism is applied to health care in a systematic way by H. Tristram Engelhardt, Jr. (2). Following Nozick, Engelhardt believes that justice is done when people are not coerced, not even by a government collecting taxes to carry out projects endorsed by the majority.

Engelhardt distinguishes between illness and disease caused by another person, which he calls "unfair," and the same conditions not so caused, which he calls "unfortunate." Within this context, *retributive* justice, which requires government intervention and even forced retribution in case of injury, is consistent with Libertarian principles. Another supporter of Libertarianism, Charles Freed, does not object to some government involvement in health care delivery so long as the patient is the one who makes the choice (3). In addition, even within the Libertarian framework some government involvement in health care is needed to address public threats like AIDS, TB, malaria, sexually transmitted diseases, etc.; and neither Engelhardt nor any other Libertarian objects to economically advantaged people acting charitably toward the poor.

Engelhardt summarizes his support of a Libertarian view of justice as follows:

> A market [Libertarian] approach maximizes free choice in the sense of minimizing interventions in the free associations of individuals and in the disposition of private property. In not intervening, it allows individuals to choose as they wish and as they are able what they hold to be best for their health care. It makes no pretense at cost containment. Health care will cost as much and will receive as much commitment of resources as individuals choose. The percentage of the gross national product devoted to health care will rise to a level determined by the free choices of health care providers and consumers. If some element of health care becomes too expensive or not worth as much as a competing possible expenditure, individuals will engage in cost containment through not purchasing such health care, and its price will tend to fall. Finally, there will be no attempt to achieve equality, though there will be considerable room for sympathy and for the loving care of those in need. A free market economy, through maximizing the freedom of those willing and able to participate, may create more resources than any other system and thus in the long run best advantage those most harmed through the natural lottery. By creating a larger middle class, the market may tend to create greater equality at a higher standard of living and of health care than would alternative systems. Further, charity can at least blunt severe losses at the natural and social lotteries.[2]

Engelhardt's endorsement of a Libertarian view of justice is far from being flat-footed. His or anyone's application of Libertarian philosophic assumptions to the issues of health care delivery depend upon factual circumstances, especially the extent to which the free market is now or will remain the best provider of a high standard of living and of health care. Even Engelhardt recognizes the advantage of a mixed or two-tiered system that provides at least some health care for all while allowing affluent people to purchase additional health care if they desire:

> My analyses of the principles of autonomy and beneficence and of entitlements to property support a two-tiered system of health care. Not all property is privately owned. Nations and other social organizations may invest their common resources in insuring their members against losses in the natural and social lotteries. On the other hand, . . . not all property is communal.

[2]H. T. Engelhardt, Jr. (2), p. 357.

There are private entitlements, which individuals may freely exchange for the services of others. The existence of a two-tiered system (whether officially or unofficially) in nearly all nations and societies reflects the existence of both communal and private entitlements, of social choice and individual aspiration. A two-tiered system with inequality in health care distribution would appear to be both morally and factually inevitable.

The serious task will be to decide how to create a decent minimum as a floor of support for all members of a society, while allowing money and free choice to fashion a special tier of services for the advantaged members of society. The problem will be to define what will be meant by a "decent minimum" or "minimum adequate amount" of health care . . . .[3]

Having said this, Engelhardt returns to the centrality of autonomy and free choice, as he insists that different communities and nations will generate different views of that minimum which can be provided by public support. Some will not be able to provide any health care out of the public treasury. In more affluent societies like the United Kingdom, a decent minimum will not include dialysis for patients over 55 years of age (which is provided in the United States). Heart transplants are not included in the U.S. minimum.

> Particular systems of health care exclude others. Particular systems of health care are particular in choosing certain goals but not others, in ranking some goals higher and others lower. That patients in one system will receive care that they would not in another, that patients who would be saved in one system die for lack of care in another, is not necessarily a testimony to moral malfeasance. It may as well be the result of the different choices and visions of different free men and women. As we have seen, there are limits to our capacity as humans to discover correctly what we ought to do together. We humans must instead settle for deciding fairly what we will do together, when we cannot together discover what we ought to do. Even gods and goddesses must choose to create one world rather than another. So, too, must we.[4]

Equalitarian Theories

If justice for Libertarian theorists is essentially the protection of autonomy, for the Equalitarians it is essentially equality. Justice is done when resources are allocated to those in greatest need, so that disparities are overcome and as much equality as possible is achieved. If Libertarian theories are grounded in modern or post-modern secular visions of life, Equalitarians tend to share a more religious vision—one in which people are called upon to do more than recognize the lottery-like dimensions of a life that distributes benefits and burdens unequally. The religious task, and the task of justice, is to work to overcome natural and social inequalities through rational altruistic policies.

Libertarians and Equalitarians agree that health care costs, like defense expenditures, can absorb the resources of any nation. (People never seem to have enough health or enough defense.) The ethics of health care allocation address the problem of deciding who has an ethical claim on scarce resources. Every community and nation is forced to contain health care costs, so the ethical question is how the cost containment should occur.

Equalitarian theorists insist that scarce resources be used where there is the greatest need, rather than where free market forces determine. Bioethicists who espouse this view include Robert

[3]H. T. Engelhardt, Jr. (2), pp. 361–362.

[4]H. T. Engelhardt, Jr. (2), pp. 368–369.

Veatch (4), James Childress (5), Jean Outka (6), Paul Ramsey (7), and many others. Moreover, many of the structural health care changes proposed in the U.S. during the 1960s and 1970s relied heavily upon equalitarian arguments coming from politicians and political economists; and the concept of equal access to health care based on need still enjoys broad support worldwide.

Critics talk about the ambiguity of "need." Even if those citizens in greatest need could be identified, channeling care to the most needy could quickly exhaust any budget.

Veatch responds by setting out a view of what constitutes a moral community that differs radically from Engelhardt's. For Veatch, every person's welfare must count equally if a group is to qualify as a moral community. Inequality is not accepted as an "act of God." Morality is seen in terms of meeting needs and achieving impartiality. Social decision-making, both in health care and in other areas of social life, must take equal account of all persons; and only by so doing does a community move beyond egoism into a moral perspective.

"The Equalitarian understanding of the principle of justice is one that sees justice as requiring (subject to certain important qualifications) equality of net welfare for individuals" (3).

What Veatch means by equality is neither equal ability nor equal merit of individual claims. His understanding of justice as equality is that people have a claim that the total net quality of their lives be equal as far as possible with the net quality or welfare of others. Consequently, when benefits are distributed, those least well off will be the ones most favorably impacted if the benefits are distributed justly. Just distribution should have the goal of equalizing welfare as its primary objective. Gross inequalities are fundamentally wrong, and their remediation should be the aim of any just social policy. Thus, equalitarian justice requires that social practices and policies strive for an equality of net welfare.

Within this framework, simple equal distribution of health care would be foolish. If the goal of justice is to produce a chance for equal net welfare, distributing care to those in need is critical. Therefore, Veatch does not favor giving the same amount of care to all but rather providing health care in proportion to need, focusing especially upon the most needy.

But Veatch, like other theorists, also faces up to the hard facts of economics, bureaucracies, and conceptual ambiguities. In so doing, he sums up how his Equalitarian theory of justice finally influences what is actually done by health care planners and how his theory differs pragmatically from Libertarian theories:

> With a fixed budget, reasonable people will come together to decide what health care services can be covered under it. The task will not be as great as it seems. The vast majority of services will easily be sorted into or out of the health care system. Only a small percentage at the margin will be the cause of any real debate. The choice will at times be arbitrary, but the standard applied will at least be clear. People should have services necessary to give them a chance to be as close as possible to being as healthy as other people. Those choices will be made while striving to emulate the position of original contractors taking the moral point of view. The decision-making panels will not differ in task greatly from the decision-makers who currently sort health care services into and out of insurance coverage lists. However, panels will be committed to a principle of justice and will take the moral point of view, whereas the self-interested insurers try to maximize profits or efficiency or a bargaining position against weak, unorganized consumers.[5]

[5]R. M. Veatch (4), p. 265.

Equalitarian-Libertarian Theories

John Rawls, in his influential work *A Theory of Justice* (*8*), asserts that society is a grouping of people dedicated to advancing the good of all. Rawls maintains that the basic "goods" involved are liberty and equality; and he arrives at the basic values of both by lowering a veil of ignorance that functions as an epistemologic device.

Specifically, Rawls asks what rational people would choose if, behind "a veil of ignorance," they were asked to decide on principles for a just society. No one knows what his or her station or particular lot would be, and on this basis decisions about the just structure of society can be made. In other words, Rawls believes that a just society would be one ruled by the principles that rational people devise in a state of rational blindness or veiled ignorance.

Using this approach, Rawls finds that the first emerging principle is that of liberty. A just society, Rawls insists with the Libertarians, is one of maximum liberty. Liberty is basic for a just society because it provides the basis for individual or personal self-esteem. No rational person, according to Rawls, would sacrifice basic liberty, even for material possessions. Hence, "each person is to have an equal right to the most extensive total system of basic liberty compatible with a similar system of liberty for all."

But rationality behind the veil of ignorance also reveals another basic principle of a just society. Natural and social lotteries generate inequalities; and rational people ignoring their place in society would want to minimize these inequalities. Therefore, a just society would be one that minimizes the accidents of history and biology by espousing the ideal of equality.

This Rawlsian principle of equality or fair distribution, as asserted by unencumbered reason, means that justice (working through just social institutions) should improve the lot of the least advantaged as much as possible. In order to overcome the inequalities of life's lotteries, the equality principle requires compensation for people who suffer handicaps. It also redresses naturally unequal distributions of benefits by making inequalities acceptable only if they benefit the least advantaged. The just society, then, would be one ruled by the dual principles of liberty and equality—such that justice translates into freedom and fairness.

Many different thinkers refer to some aspect of Rawls' theory for support and justification. Veatch, for one, uses a Rawlsian framework—both a contract theory of justice and a variation on the veil of ignorance device (which Veatch calls the moral point of view). He refers to Rawls' theory as a "maximum" position and takes a more radical equalitarian stance to distinguish his own viewpoint. That is, Rawls' just society tolerates inequalities so long as they provide relatively greater benefits to those with less. Veatch wants just policies to focus on achieving equality in a more direct and straightforward way.

Applied to health care, Rawls' equality principle requires that health delivery systems grant the least well off access to a certain level of medical care and services, so as to maximize their benefits. In this manner, this principle provides a standard against which particular health care systems can be tested. The thrust of Rawls' theory is that a just society (or institution or health care system) is one that ensures maximum liberty and works against inequalities.

Although Rawls does not himself apply his theory to health care delivery issues, other philosophers do. Among the most prominent is Norman Daniels (*9*), who argues that health care should be

provided so that more persons would be free to take advantage of society's opportunities. Daniels insists that there should be no obstacles—either financial, racial, geographic, or sexual—to initial access when health needs are present; for he argues that without minimal health care for all, the idea of equal opportunity simply will not work.

Daniels also moves from this philosophic argument to more concrete policy issues, recommending planning strategies that will make his justice standard politically feasible. He insists that a rough measure of equal opportunity—enough to revise and carry out one's life plan—be present at each stage in life, even for the elderly. This of course requires financial planning, because the elderly will consume proportionally larger amounts of health care resources. Daniels therefore makes tax recommendations aimed at providing such benefits without creating conflicts with younger generations (*10*). The underlying theoretical foundation for these restructuring plans is the Rawlsian theory of justice.

Utilitarian Theories

All the above-mentioned theories could be described as deontologic. Justice in every instance is identified with a principle that establishes what is right or just independent of consequences. But not all theories of justice are based on principle. Specifically, the fathers of Utilitarianism, Jeremy Bentham (*11*) and John Stuart Mill (*12*), attempted to move away from an ethics driven by principle; they set out to reform legal and social institutions on the basis of objective calculations about social benefits.

In general, Utilitarians believe that right or just actions are not those that conform to principles but those that produce desirable results or minimize undesirable ones. Regarding health, individual responsibility to do good and avoid evil, social responsibility in the sense of duty to create a decent society, and the economic resources available all have to be balanced in order to fashion a system of health care that is just according to Utilitarian theory.

According to this approach, justice obliges people to prevent evils such as diseases and poor health as much as possible. But health care justice provides no independent ethical standard. Indeed, the term "utility" at the heart of Utilitarianism may be defined as meaning the greatest good for the greatest number; and within this context, Utilitarians see justice as merely another term for talking about this objective. When it comes to making health care policy or reforming a health care system, rather than striving to make the system promote an independent standard of justice such as equality or freedom, Utilitarians look for trade-offs, compromises, partial allocations that maximize benefits and minimize costs while striking a balance among competing groups. It should be noted, however, that these benefits and costs are measured for the greatest number and not for any special population (like the most needy).

Nonphilosophers who work with health care issues (politicians, economists, social policy planners, government health care administrators, etc.) most often assume an underlying Utilitarianism. They work to design or reform the system so that many different interests are balanced, positive outcomes for most people are achieved, and burdens are spread evenly throughout society. Those innocent of philosophy may even identify the Utilitarian approach with common sense, missing the underlying assumptions and problems of their perspective.

The principal problem is that achieving the greatest benefits for the greatest

number is not as simple as it looks. In particular, there is the problem of how to quantify benefits and burdens in order to make just choices. Things like pain, death, and disability are hard to quantify; and comparing benefits and burdens means comparing much that is subjective rather than objective.

Objective cost estimates can be attempted, however approximate they inevitably turn out to be. But if Equalitarians can rightly be faulted for not giving enough attention to economic costs, the Utilitarians can certainly be faulted for overestimating the objectivity of their cost analyses. Indeed, cost balancing often loses contact with individuals who are helped or harmed. Policies that produce the greatest net benefit for most people may involve terrible costs for small groups who are unattended. It is precisely these least advantaged that the Equalitarians and Rawlsians insist on helping.

Utilitarians side with Equalitarians about the moral superiority of altruism over Libertarian egoism, but differ with them about how to make concrete health care allocations.

In general, Libertarians seem more sensitive than Utilitarians about redressing harms or injuries. That is, Libertarians require government action to redress injuries caused by others, whereas Utilitarians might excuse such injury if it were accompanied by great social benefit.

The highest compliment theorists of other persuasions pay to Utilitarian theories of justice is the use they inevitably make of Utilitarian strategies for cost-assessment of alternatives. John Rawls himself uses such strategies (*13*).

Tom L. Beauchamp (*14*), a widely published bioethicist, applies a Utilitarian perspective to the issue of justice in health care allocation. In so doing, he denies making any practical application of deontologic theories of justice: "Policies governing practical matters of great complexity cannot be directly and consistently derived from highly abstract principles. Such derivations cannot be achieved in law, and even less can they be achieved in philosophy. There is no single, consistent set of material principles of distributive justice that reliably applies when concrete issues of justice arise" (*15*).

Beauchamp's starting point is in the midst of financial exigencies and political pressures. These can be measured and balanced, and only by doing so can one move toward a just health care policy. For Beauchamp, cost-benefit analysis rather than moral principle is the method of choice for arriving at justice (*16*).

There is no positive right to health care for Beauchamp, and yet he does recognize some sort of social obligation to provide health care goods and services. How much service and care depends not upon the obligations created by principles, but rather upon careful measuring and balancing of costs and benefits. Within this context, Utilitarian theory might support a decent minimum of health care for all or might not, depending on the fiscal circumstances and political pressures involved.

If deontologists fault Utilitarians for the ambiguities associated with weighing hard-to-quantify human benefits and burdens, Utilitarians and Beauchamp fault deontologists for the ambiguities associated with defining just what they mean by "need," a "decent minimum," and "socially caused" disease. If people want to talk about rights to health care services, Beauchamp insists that the focus be placed on limitation of such rights and specification of the health care services that can be afforded. For him the "major issues about rights to health and to health care turn on the justifiability of social expenditures rather than on some

notion of natural, inalienable, or pre-existing rights."[6]

Socialistic Rights Theory

A radical Marxian critique of all the preceding theories, especially Libertarian theory, might go something like this: Talk about justice and health care by philosophers in capitalistic systems is purely formalized discourse—the reflection of an underlying economic structure that is itself unjust. All the above theories are nothing more than justifications of the injustices present in the underlying capitalistic infrastructure.

For Marxists, the so-called universal rights to civil liberty, life, happiness, property, etc. are negative, guaranteeing only that people will be left alone to pursue their own individual objectives. But to be truly free and fully human, citizens need positive rights, including those proclaimed by the Marxist Manifesto in 1948: rights to work, housing, education, and health care.

This approach equates formal justice with giving everyone his due, and Marxist theory insists that meeting basic human needs is everyone's due. Hence, in Marxist theory basic needs create the foundations of basic rights, including the right to health care. Marx did not like referring to "rights," because he felt this reflected the way capitalist ideologies view citizens. But according to Marxist theory every citizen should be guaranteed health care "according to his needs," and the whole society should bear the cost. Thus, in effect, there is a positive right to health care.

Anyone who thinks theories of justice and philosophies of life really don't count for much needs to consider the influence of Marxist theory on health care organization around the world. Immediately after the Russian Revolution of 1917, Marxists took advantage of a socialized medical system that had been developed by the Czars to meet the needs of liberated serfs, one that had been in place in Russia since 1867. That is, the Marxist Government expanded this health care system to provide coverage first for all workers and then for all citizens. Article 20 of the U.S.S.R.'s 1936 constitution granted every citizen social security including health care and guaranteed that free medical care would be provided through a large network of hospitals. The Soviet system became a model for other countries, both within the Soviet sphere of influence and beyond.

In 1917 Mexico made industries responsible for the health needs of their workers and committed the Government to a social security system which included health care. In 1919 Germany established a similar sort of government-run health system. And in subsequent years other countries took action along similar lines.

In 1948 the American Declaration of the Rights and Duties of Man was signed at Bogotá, Colombia. This hemispheric declaration included health care among the basic human rights. Later that same year Article 25 of the United Nations Declaration of Human Rights spoke of health and health care as basic human rights. These declarations of the right to health care neither established a socialized system of free care nor specified how governments would respond to proclamation of this right. But the idea of health care as a right—one usually claimed against the government, at least as a last recourse—has had an enormous influence on health care throughout the world.

To the eighteenth-century negative rights have been added nineteenth-century positive rights, including the right to

[6]T. L. Beauchamp and R. R. Faden (*15*), p. 130.

some form of health care. Even in capitalistic countries with liberal political systems, talk about a right to health in the sense of not being impeded in the pursuit of health or not being deprived of health by injury, has given way to talk of a positive right to some form of health care. In 1981 the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research reflected this trend in the U.S. It did not go so far as to declare a right to health care, but it did speak of a social obligation to provide a decent minimum for all. Society, in the sense of the collective American community, has an obligation according to this prestigious and influential commission to ensure equitable access to adequate health care for all. It endorsed a two-tiered system in which those who are poor and old will be provided for by the Government and those who can purchase more health care via insurance are free to do so.

Political groups, however, and particular philosophers do speak of health care in terms of a positive right (*17*). A positive right attains legal status when, for example, a Medicare or Medicaid law grants a health care entitlement or when the constitution of a nation extends its social security act to cover the health care needs of every citizen. In the U.S. there is no constitutional right to health care, but there are limited medical care rights (i.e., for veterans, the elderly, and the poor). The argument among philosophers is whether or not a moral right exists, and whether justice requires health care coverage. Allen Buchanan, a philosopher from the University of Arizona, argues for a right to an adequate (not maximal) level of health care with the tools of linguistic analysis without making any reference to the historic grounds for such a right (*18*).

Philosophers, legislators, and health policy experts in the U.S. continue to argue for some type of national insurance which would relieve the scandal of so many citizens not having access to health care services. They call attention to the fact that in the U.S. an institutional commitment to equality exists in education and in the legal system. Law and education are one-tiered, government-supported, and accessible to all. But when it comes to health, the rhetoric of free enterprise and the illusion that it will somehow provide the best health care for all continues to influence health policy. Philosophers making arguments for a right to health care play a role, but ultimately rights language and appeals to justice are translated into strongly Utilitarian categories.

CONCLUSION

If theories of justice do not generate just health care systems but do influence their adjustment and reform, then it makes sense to take such theories seriously. Theories of justice have in the past had enormous influence on the way health care is delivered, and they continue to play an important role today. The literature of medical ethics during the 1980s was dominated by justice issues, and the same will most likely be true during the present decade. Health care systems are under enormous pressure, both in capitalistic and socialistic countries. The AIDS epidemic threatens to overwhelm even the best organized systems in the most advanced nations. Pressures are felt everywhere to expand or improve or reform existing health care systems; and theories of justice inevitably become part of the reflective process and accompanying debate.

Most people agree that no one theory is adequate to the complexity of a just health care delivery system. So a climate of compromise and respect for different perspectives has to be created. And no

matter what the system, scarcities have to be confronted. Each system has its own way of handling these, and each has its special drawbacks. Nationalized or socialized systems put a cap on how much of the available resources will be spent on health care. Then the salaries of health care professionals are capped. Costs are controlled further by deciding what not to treat. Finally, available care is rationed, usually by permitting lines to develop (making people wait saves money).

Not all socialist systems are the same. Some have more to spend than others. But government-imposed restrictions are difficult to take when people die who could live. Thus, as time goes on, socialist systems create greater and greater numbers of critics. Usually they start out with high marks and great popularity, but both decline as the years go by and the deficiencies mount.

Capitalist systems are more consumer-driven, but increasingly employers have to pay the bills. Pure capitalistic care, in the sense that each individual buys what care he or she wants or can afford, seems impossible, and inevitably the government becomes a provider, at least for the poor and elderly. Even so, situations develop that most citizens consider blatant and morally unpalatable injustices.

The cost of caring for so many uninsured cannot long be absorbed by hospitals. In many U.S. cities the public hospitals are near collapse under the weight of the poor and people whose only access to health care is through the emergency room. In places like New York or Washington, D.C., even people with insurance sometimes cannot gain needed access because the available beds are filled. Moral community cannot endure with a health system in which life and death depends upon wealth, and only the very wealthy can be adequately treated.

Different types of economic systems thus create different types of health care delivery problems but force people into the same reflections upon what is right or just. In this way, health care delivery problems make reflection on theories of justice inevitable.

If cooperation can take place across ideological lines in matters of politics, economics, and defense, then it is not too much to hope that health care planners (even those endorsing different theories of justice) can find common ground and cooperate to make the health care that all people value so highly a reality. Or more modestly, perhaps at least theorists and planners can cooperate to keep innocent people from dying when resources are available to save them, if only these resources were part of a more just system of distribution.

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Bioethics: A New Health Philosophy

JOSÉ ALBERTO MAINETTI[1]

I should like to offer a few comments and join author Gracia in briefly discussing the question of "What constitutes a just health services system and how should scarce resources be allocated?"

A HEALTH DILEMMA

Health, understood as "absence of illness" achieved through an approach to medicine that appears to harmonize the scientific, artistic, and spiritual, has ceased to be a private matter. Today health is a public matter whose object is "welfare," and whose approach is one based on a kind of medical care that produces conflict between industry, trade, and politics.

Health advances aimed at improving the quality of life may have become the most significant advances in the recent history of mankind. However, the price of success has been high and has produced a variety of problems. Possible benefits have come to conflict with the ethical and economic limits of the system, which is undergoing a crisis of values related to well-being and financial resources.

All this has made medicine the new Pandora's box of industrial society. Medicine has many fine attributes, but at the same time is the source of many evils. It nurtures the sort of hope that mankind used to place in ambrosia—the "bread of health and immortality" capable of being transformed into the bread of disease and madness. In both life and mythology such transformations are disconcertingly commonplace—as illustrated by the fate of Asclepios, who was punished for engaging in anti-Darwinian behavior, because his revival of the dead was depopulating Hades.

[1]Institute of Medical Humanities and Center for Bioethics, Dr. José María Mainetti Foundation. Mailing address: Calle 508 y 18, 1987-M. B. Gonnet, Buenos Aires, Argentina.