



Editorial

Is there a natural right to health care?

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In a memorable editorial, Frank Davidoff, M.D., Editor of the *Annals of Internal Medicine*, and Davidoff and Reinecke of the Jefferson Medical College called for a 28th Amendment to the U.S. Constitution to establish universal health care as a right.^[2] It was promulgated in a “Dear Health Care Colleague” letter by Ira Hellander, M.D., executive director of Physicians for a National Health Program, a group calling for socialized medicine in the United States^[4] The Amendment would read in part, “All citizens and other residents of the United States shall have equal access to basic and essential health care.”

Moreover, it should be affirmed that the reelection of President George W. Bush in 2004, a Republican president, who expressed support for Health Savings Accounts and free market reforms to improve access to and quality of American medicine, did not quash the efforts of those who want to impose socialized medicine in the United States by trumpeting the concept of medical care as a right.

But is medical care really a basic human right? Does an individual have a right to health care? Let’s say categorically that health care is not a natural right. It may be a government granted collective entitlement, but not an individual human right. Why? Because a right to medical care imposes an obligation on a physician to provide services to anyone and everyone with whom he has not even had necessarily an established professional relationship.

But what about the indigent? The fact is that still today, as through every era of medical history, indigent patients have been taken care of by physicians with dignity and compassion in the name of genuine charity, *pro bono publico*.

Before the federal and state governments began their relentless campaign against the medical profession, physicians were happy to treat indigent patients as something that came along with the territory. Government money in the form of Medicare, Medicaid, and other entitlements, such as the state children’s programs, is ending all of that. The persecution and prosecution of physicians for alleged fraud and abuse have further eroded the trust previously inherent in the patient-doctor relationship with senior citizens being called on by the government to become bounty hunters against their own doctors. This police state of medicine has been enacted for the usual reasons (that is, coercion and intimidation to make physicians more compliant to the increasingly draconian rules and regulations) as well as to replenish the previously exhausting Medicare coffers.

Already, when physicians get up in the middle of the night to provide charitable emergency room services or urgent consultations, due to the creeping, alleged right to medical care, the patients have come to believe that they owe the physician nothing. They believe that they are entitled to

these services for which, in reality, they have no moral claim on the physician. For their part, physicians believed that these professional obligations were only the self-imposed duties and traditions of a venerable profession, wherein members have been inducted after answering a sacred calling. Moreover, rather than getting paid for the fruits of their labor or the agreed on price on the value of their services, physicians today are paid, if at all, at discounted health maintenance organization or government dictated rates; in part, due to greed on the part of the health maintenance organizations; in part, due to the government push for cost containment; and in part, due to this permeating, erroneous, and socialistic concept of health (or medical) care as a right.

The aforementioned medical writers cite the United Nations Charter as an exemplar of human rights. It is not. United Nations rights are a deceptive illusion. Natural rights are God-given or Nature derived, not government granted as is the case with UN rights. True natural rights are intrinsic to our humanity. They are inalienable rights that are not government granted. They are negative rights in that they can be exercised by anyone without imposing on the rights of anybody else – as such, they are not morally subject to government qualification. The United Nations enumerates a myriad of rights in the various charters only to qualify them out of existence in the same document, a few sentences later. Take for instance, the 1966 UN International Covenants on Civil and Political Rights granting the rights to freedom of thought, conscience, and religion... “*may be subject only to such limitations that are prescribed by law and are necessary.*”^[10]

You see, in UN documents, rights are granted but then are subject to arbitrary cancellation by government under UN authorities – sometimes in the same paragraph, in which the rights are granted. The same is the case with the 1948 UN Universal Declaration of Human Rights, which after enumerating a myriad of “rights and freedoms” states, “these rights and freedoms may in no case be exercised contrary to the purpose and principles of the UN.”^[9]

That is not the case with genuine basic (natural) rights to life, liberty, property, and the pursuit of happiness as stated in the American Declaration of Independence and the US Constitution that are stated to be God-given or Nature derived rights and which cannot be taken away arbitrarily by the State. And that is why the First Amendment to the US Constitution clearly and emphatically asserts that “Congress shall make no law...” regarding those natural rights, in contrast to the UN-granted rights, which are always virtually qualified out of existence by imposing limitations and restrictions.

The American Founding Fathers were, in fact, so jealous of their newly won freedoms that they added 10 amendments to the US Constitution guarding the freedoms and specifically

reaffirming the most basic (natural) rights of American citizens. Americans refer to these first 10 amendments to the US Constitution as the Bill of Rights.

Here is the First Amendment to the US Constitution enshrined in the Bill of Rights:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

When Thomas Jefferson wrote the Declaration of Independence, he followed a path blazed by John Locke (1632–1704) which extended as far back as Medieval philosopher and scholar St. Thomas Aquinas (1225–1274) and even the Roman statesman Cicero (108–43 BC) to the philosophical tenets of the Natural Rights of citizens, the basic rights to life, liberty, and property.^[3] St. Thomas Aquinas recognized the fact that if human law “deflects from the law of nature, it is unjust and is no longer a law but a perversion of law.” And Cicero, who did not believe in a Judeo-Christian God, but recognized Natural Law, predicated that the power of the state be limited.^[8] He wrote:

[W]hat is right and true is also eternal and does not begin or end with written statutes....From this point of view, it can be readily understood that those who formulated wicked and unjust statutes for nations, thereby breaking their promises and agreements, put into effect anything but “laws.” It may thus be clear that in the very definition of the term “law” there inheres the idea and principle of choosing what is just and true.... Therefore, Law is the distinction between things just and unjust, made in agreement with that primal and most ancient of all things, Nature; and in conformity to nature’s standard are framed those human laws which inflict punishment on the wicked but defend and protect the good.^[8]

Moreover, in our own American Republic, Alexander Hamilton (1755–1804), the American patriot who led the heroic charge against the entrenched British at Yorktown in 1781, asserted, “No tribunal, no codes, and no systems can repeal or impair this law of God,” for by His eternal laws, it is inherent in the nature of things.^[8]

“Traditional legal rights,” according to Professor Iredell Jenkins of the University of Alabama Law School, “are primarily protective: they guarantee citizens certain basic freedoms and immunities and protect them against intrusion or arbitrary action by the state. These rights do not bestow any positive benefits on the people...these traditional rights are not conferred on citizens by the state; rather, the people hold these rights prior to and independently of the state, which is merely enjoined to respect them and assure their free exercise.”^[6]

Natural rights embody the concept of individual autonomy and negative rights that are inalienable and inherent to human beings. Natural rights (for example, life, liberty, the owning and disposing of property, and the *pursuit* of health, occupation – and happiness), as basic human rights, can be exercised by all individuals simultaneously without infringing and trampling on the rights of others (that is, negative rights concept). When governments transcend these rights with welfare rights, entitlements, and redistribution of wealth schemes – in the name of compassion, utilitarianism, or some greater common good – they squarely infringe on the autonomy and basic rights of individuals and corrupt the negative concept of the law.^[3]

The French statesman, Frederic Bastiat (1801–1850) in his monumental book *The Law*, wrote that negative laws impose nothing on the individual, but a mere negation of unjust actions. “(The laws) oblige him only to abstain from harming others. They violate neither his person, his liberty, nor his property. They safeguard all of these. They are defensive; they defend equally the rights of all.” Moreover, “...when the law, by means of its necessary agent, force, imposing on men a regulation of labor, and method or subject of education or religious faith or creed – then, the law is no longer negative.” It acts positively on people. It substitutes the will of the legislature for their own will.^[1]

It has been stated that the welfare clause in the Preamble to the US Constitution authorizes Congress to distribute entitlements and redistribute wealth. However, in discussing this clause, Thomas Jefferson wrote:

A distinct substantive power, to do any act which might tend to the general welfare, is to render all the enumerations (of their specific constitutional powers) useless, and to make their power unlimited.

And James Madison, the Father of the Constitution, in a letter to Edmund Pendleton dated January 21, 1792, wrote: “(If) Congress can do whatever in their discretion can be done by money, and will promote the General Welfare, the Government is no longer a limited one, possessing enumerated powers, but an indefinite one, subject to particular exceptions.”^[5]

The unintended consequences of this federal creation of a myriad of welfare rights and collective entitlements are that the State forges government dependency on one class of citizens while imposing oppression on another; and in the case of health care, it is building the keystone of the arch of socialism using government-provided health care as the scaffold.^[3]

Medical care as a right would require physicians to provide their services while violating their professional code of free association and negating their legal prerogative to participate in voluntary binding agreements – that is the legal basis for

the establishment of the patient-doctor relationship as well as our professional and ethical bases according to the Oath and ethics of Hippocrates. It would also set the precedent that physicians will be bound by whatever standards are set by the State. This action not only infringes on a physician’s autonomy but also, as Frederic Bastiat asserted over a century ago, constitutes legal plunder and organized injustice.^[1] The physician becomes an indentured servant bound to the State. Moreover, the patients owe the physicians no gratitude for their labors because they are supposedly entitled by the right to their labors.^[3]

Health care is not a right, just as there are no rights to shelter (housing), clothing, food, or a paid vacation to Acapulco or Miami Beach just because we are human. In essence, no individual is entitled to the services or the fruits of another’s labor without his permission and just compensation. Physicians should be free to offer their services free of government coercion and, at least in theory, on whatever terms he or she chooses. As objectivist philosopher, David Kelley, points out:

A right is a principle that specifies something which an individual should be free to have or do. A right is an entitlement, something one possesses free and clear, something one can exercise without asking anyone else’s permission. Since it is not a privilege or favor, we do not owe anyone else any gratitude for their recognition of our rights. However, there is no such right [to medical care]. There cannot be — not in a free society which recognizes the genuine rights of individuals to their own autonomy.^[7]

If the state genuinely wants universal coverage, while preserving quality and freedom of choice, then, it should provide the proper, free market, voluntary incentives for both patients and doctors to pursue those goals without violating the autonomy of either the patient or the doctor, or the sanctity and trust of the patient-doctor relationship. Moreover, if health care costs more and seems less affordable that should be enough of a reason to deregulate the insurance industry and educate the people to the need for catastrophic coverage through true indemnity insurance which should be made widely available along with tax-free Medical Savings Accounts.

We will never have “freedom from fear” or “freedom from want.” Moreover, life will never be risk free, notwithstanding what one has been led to believe by authoritarian do-gooders. Complete security can only be found in a maximum security prison. Total security is just a pipe dream as was amply demonstrated in the communist gulags of the former Soviet Union and Eastern European dictatorships. Governments of these workers’ paradises murdered millions of their own citizens while deluding them with the false illusion of complete security, including cradle-to-grave health care – health care as a right.

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Editor's note:

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