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Health Care in the United States: Individual Right or Government Duty?

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Abstract

The authors discuss the notion of health care as a governmental duty rather than a right of individuals. The notion of individual rights was proposed by political philosophers of the 17th and 18th century, who posited that people existed in a state of nature before coming together to form communities. Members of communities relinquish certain freedoms in exchange for services provided by government, including protection of the natural rights of “life, liberty, and the pursuit of happiness.” In this tradition, there are natural rights that exist prior to government and must be protected from government infringement. The U.S. Constitution almost exclusively enshrines *negative rights*, which protect natural rights from government interference. Rights belong to individuals, whereas the government has duties to provide services, such as basic education, that society deems to be important. The discussion of health care as a *positive right*, one requiring government to provide citizens with services, runs counter to this tradition of natural rights.

The authors propose that reframing the discussion to see universal access to health care as an obligation of government, rather than a right of individuals, will center the discussion more accurately within U.S. political tradition. This may drain the emotional charge associated with claims to “rights” from public debate and allow for productive negotiations over the extent of health care appropriate for government to provide, within the context of the other obligations that form the social contract between the citizenry and its government.

Atul Gawande¹ interviewed residents of the Appalachian foothills in Ohio about whether they viewed health care as a right. Most residents of that region—ravaged by a crisis of opioid addiction—said no. “I never thought about it as a matter of rights,” one person said. “A lot of these things we think are rights, we actually end up paying for...you can’t get something for nothing,” said another. Even though many would personally benefit from government-sponsored health care, framing health care as a right violates their sense of personal responsibility and, more broadly, of what constitutes a right.

During recent elections, tempers routinely flared as politicians and pundits argued over whether U.S. citizens have a *right* to health care. Specters of socialized medicine, “death panels,” and freeloaders have been pitted against the promise of solving a crisis of soaring costs and paving the way for an egalitarian future. On both sides, discussing health care as a right stirs up visceral feelings.

We propose that reframing the discussion about universal access to health care to be an obligation, or duty, of government, rather than a right of individuals, will anchor the discussion more accurately within our political tradition, yield more productive conversation, and permit us to make the inevitable choices about the “amount” of health care we can afford as a society.

Although the foundation of the argument that health care should be accessible to all fundamentally rests upon a moral obligation and societal duty, the provision of health care in society is, at its core, a product of a political process that requires the allocation of finite resources. The discussion within the public sphere of health care as an ethical imperative appeals to our sense of morality, yet discounts the harsh reality that to seek this imperative’s standard, health care must be negotiated in the context of other obligations that form the social contract between the citizenry and its government.

Natural Rights Within U.S. Political Culture

For many in the United States, the meaning of a *right* arises, either consciously or subconsciously, from the political philosophy that guided the nation's founders in the 17th and 18th centuries. According to 17th-century writers such as Thomas Hobbes² and John Locke,³ we existed in a state of nature before coming together to form communities; in that state, we were free to do what we wished. Health care—like schools, police, and the military—does not exist in the state of nature. As communities developed and people cooperated to achieve common goals, we relinquished certain freedoms in exchange for these services, provided by the government, as part of the social contract.

The social contract protects certain rights of individuals within society, while we collectively (as enumerated in the preamble to the Constitution⁴) “ensure domestic Tranquility, provide for the common defense, and promote the general Welfare” in accord with basic principles of justice. The Declaration of Independence,⁵ a conceptual rendering of the social contract, affirms the rights of citizens, including the right to “life, liberty, and the pursuit of happiness.” We suggest that legal rights as defined by the U.S. Constitution and the Declaration of Independence act as a close reflection of our understanding of moral, or natural, rights.

It is important, though, to distinguish between framing a right as positive or negative. A *negative right* is articulated as the right to be protected from an action of government, the clarion call of colonists throughout the American Revolution, which was fought (among other reasons) to affirm that government should not infringe upon one's rights.⁶ For example, the government cannot take away the individual's right to free speech or religion. These rights are more accurately understood as the right to speak and worship without government interference. The

first eight amendments to the Bill of Rights⁷ were written to protect rights against encroachment by the federal government.

In contrast, *positive rights*— unlike natural rights, which precede the formation of government— require the creation of a governing entity and obligate that entity to provide a citizen with a good or service. Hobbes² summarized the distinction between positive and negative rights in *The Leviathan*, writing that “law and right differ as much as obligation and liberty.” *Liberty* is the state of being free within society from oppressive restrictions on one’s way of life, behavior, or political views. In contrast, our obligation as a society is to provide, through our laws, agreed-upon services that warrant that we surrender certain liberties, or freedoms.

The U.S. Constitution describes a social contract that almost exclusively enshrines rights as *negative* rights in order to protect our liberties. In our political tradition, rights belong to individuals. In contrast, the government has duties, or obligations, to provide services that we as a society deem to be important; we pay for these services and may sacrifice some of our liberties in return for them. The right to free speech, as noted previously, is more accurately understood as the individual’s right to speak without government interference. One might then extrapolate that the right to “life, liberty, and the pursuit of happiness” implies a negative right to health—i.e., according to the Constitution, the U.S. government must be restrained from impinging upon the health and liberty of individuals as they pursue individual happiness.

If we establish that health is a right provided under the Constitution, then one must consider whether the requisite conditions necessary to maintain health are also rights. Understanding the paramount importance of social determinants of health,⁸ must we also consider food, clothing, and proper shelter, along with health care, as rights of individuals under the social contract? For example, studies of the implementation of supplemental nutrition assistance⁹ and public housing

programs¹⁰ recognize how social circumstances vitally contribute to health outcomes.¹¹ From a practical perspective, it makes little sense to individuals, or to the society paying the bills, to provide unlimited health care as a “right,” but not provide the means to a healthy life that would minimize the need for health care. However, advocates for providing the requisite conditions of life (including food and shelter) are frequently met by concerns regarding the specter of “socialism,” which has long been a political nonstarter.

Many claim that without access to health care, one cannot exercise one’s right to life, and thus health care becomes a positive right that must be provided by the government to all members of society. But is this consistent with other Constitutional rights? By this reasoning, would one argue that absent the funds to pay for a gun, the Second Amendment would require the government to provide a gun to preserve one’s right to bear arms. After all, what good is a right to bear arms if one cannot afford a weapon? Rather, the right to bear arms, similar to the right to life, has been interpreted in the Constitution to protect individuals from government interference, defending individuals against the forcible removal of firearms or the impingement upon the right to self-defense. Therefore, it is more reasonable to state that health rather than health care is a right, and that the government then has an obligation to allocate the resources necessary to protect against impingement upon this right. Regulations that ensure safe roads, food, and clean water, for example, might then be deemed necessary to prevent impingement upon one’s right to health.

Health Care as a Duty of Government

When individuals come together to form communities, they sacrifice some of their natural rights in order to receive other benefits from and for the good of all. This is the essence of the social contract. We write laws that restrict behavior and employ police officers and others to enforce the laws to ensure our safety and freedom. We say it is a duty of government to provide this protection. Similarly, we have decided that it is a duty of government, through, for example, the Food and Drug Administration, to ensure that meat, poultry, and produce adhere to standards that protect us from food-borne illness. (See Chart 1 for brief explanations of individuals' rights and the duties of government.)

In the early 1960s, U.S. citizens decided via legislation that we, as a society, had a duty to provide health care for those over 65 years of age. It became part of our social contract and Medicare was born. In 1997, citizens decided that we also had a duty to ensure that all children in families of modest means would have health care. Likewise, it became part of our social contract and the Children's Health Insurance Program was created through legislation. With these two pieces of legislation, we were not saying that seniors and children have a right to health care. Rather, we decided that as a society, our government has a duty to provide health care for the most vulnerable in our population.

The United States has also historically codified the obligation of government to protect the health of its citizenry through federal vehicle safety regulations, mandatory vaccination, and clean water and air ordinances. The longstanding debate over helmet laws for motorcyclists highlights the cultural tension between individual autonomy and beneficence (sometimes referred to as "justified paternalism").¹² Fundamentally, despite several Constitutional challenges, the legislative trajectory has arched to allow governmental protection of citizens from preventable

harm, favoring an obligation of government to protect vulnerable individuals (including minors) by enforcing helmet laws at the state level. Similarly, mandatory vaccination laws obligate the protection of individual patients, while preventing harm to others by fostering herd immunity. These laws support a contractarian view of governance, where individuals make the rational determination that maximal self-interest derives from the collective consent to be governed and the adoption of common rules of morality.¹³

Unlike natural rights, which largely have an absolute quality to them, duties of government are determined by society, codified by legislation, and routinely established with well-defined limits. Legal duties obligate the government, based on the will of the people as expressed through their representatives, to provide a set of predetermined services. For example, the right to freedom of speech is broad in scope, with limited exceptions, including the Zauderer standard,¹⁴ which compels disclosures from drug manufacturers by means of advertising (arguably to protect the individual's right to health). In contrast, a duty can be defined with respect to specific populations and negotiated rationally through the political process. For example, although some speak of education as a right, our society came to accept education as a duty of government. Yet, the duty has been restricted to kindergarten through 12th grade and does not provide for college or professional school. The extent of this duty was negotiated through the legislative process, a negotiation that cannot occur if we state that education is guaranteed as an absolute right. For over a century, courts have consistently reinforced that education is a duty of government and not a right of individuals. In both *San Antonio Independent School District v. Rodriguez*¹⁵ and *Connecticut Coalition for Justice in Education Funding v. Rell*,¹⁶ the plaintiffs argued that individuals have a right to education and that this right was violated due to insufficient funding. Yet, in both cases, the plaintiffs' notion was refuted, with the Connecticut Supreme Court ruling

that “once a determination of minimal adequacy has been made, courts simply are not in a position to determine...[allocation of resources].” This decision underscored that individuals do not possess an absolute right to education, but rather society codifies by law the extent of the state’s duty.

Similarly, we may find success in discussing universal access to health care as an obligation of government, codified by law. To a certain extent, the people of the United States already support the obligation of government to provide basic health care to all patients through the Emergency Medical Treatment and Labor Act (EMTALA),¹⁷ which guarantees that any Medicare-participating hospital must provide emergency services to patients regardless of the individual’s ability to pay. Yet, attempts over the last several decades to extend guaranteed coverage by shifting the conversation from a governmental duty to an issue of individual rights of all citizens have been met with anger and skepticism.

As with any political process, establishing the provision of health care as a duty allows the initiation of a negotiation about how much health care to provide. Should all hospitalized patients be guaranteed access to single or double rooms? Should individuals be allowed to undergo elective surgery freely or should those procedures be limited to a certain number per year? Should patients be granted access to experimental therapies without limits?

Many industrialized countries, to which the United States is often compared, employ different strategies to negotiate the extent of governmental duty to provide health care and adjunctive social services that contribute to health. For example, Sweden¹⁸ established universal health care for its residents in 1955, but delegated regulatory and fiscal negotiations to county governments. Switzerland¹⁹ curbs the cost of health care by empowering a council to consider the cost effectiveness of new therapies prior to making coverage determinations. Likewise, in the United

States, health policy experts and researchers have suggested that cost–benefit analyses may help guide the development of policy recommendations.²⁰

Discourse in the public sphere regarding governmental duties must address questions of cost, equity, and fairness in the distribution of the resources necessary to maintain health. These questions have been addressed, for example, through supplementary proposals, including cash assistance to homeless individuals²¹ and augmented social services to qualifying individuals.²² Yet, if health care is considered to be an absolute right, how can individuals be prevented from receiving a treatment, even if the cost is exorbitant and the benefit modest? By establishing health care as a duty of government, we can begin the process of negotiating how much health care we can afford with the principles of equity and justice in mind.

Health Care as a Societal Duty

Fundamentally, people in the United States have yet to agree that the provision of health care is a duty of government for all U.S. citizens. While the Affordable Care Act (ACA) represents one of the largest recent legislatively-based expansions in health care coverage, ongoing attempts at repeal highlight persistent discord. Through the ACA and its complex insurance programs, Congress enforced increased access to health care. Yet, implementation of the ACA was confounded by arguments of health care as a right. As former President Obama²³ proclaimed, through the ACA, “health care is not just a privilege, but a right for every single American.” Yet, no one wants to negotiate away their rights; framing the issue of health care as a right prevents necessary discussion about how much care and who pays. We argue that the foundation of a durable universal health care system must first lie upon a collective agreement that there exists an acceptable basic minimum standard of care that society, through its governing bodies, has a duty to provide.

Ultimately, we believe that framing the discourse about health care as a right has been deleterious to establishing a system that provides care to everyone. As seen in the conversations Dr. Gawande had with citizens in Ohio,¹ many people in the United States speak about positive rights under the pejorative label of entitlements. Reframing the discussion to highlight a societal *duty* may drain the emotional charge from these conversations. We must first minimize vitriol in order to work collectively toward structuring our health care system to meet collective responsibilities we have to each other as citizens. The extent of the obligation may be negotiated, determining the particular details of a reasonable basic standard of care beyond the assurance of care in catastrophic situations, which is the way policy currently stands. This framework of government duty also underscores the responsibility that medical professionals have to contribute actively to public discourse on the extent of governmental obligation to provide health care, as well as the importance of emphasizing advocacy in medical education. Through rational discussion, rather than contempt-filled debate, we may hope to strive toward the philosopher John Rawls' "just and humane society."²⁴

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Chart 1

Rights of Individuals Versus Duties of Government

Rights of individuals	Duties of government
<p><i>Natural rights</i> belong to individuals and existed in a state of nature, prior to the formation of societies and their accompanying governing bodies.</p> <p><i>Positive rights</i>—unlike <i>natural rights</i>, which are rights or freedoms that precede the formation of government—require the existence of a governing body and obligate the government to provide the individual with a good or service. For example, the right to counsel requires that the government appoint a lawyer to defend an individual if the individual cannot afford to provide one independently.</p> <p>Positive rights are absent from the U.S. Constitution and the Declaration of Independence, in which <i>negative rights</i> (restrictions on government to prevent interference with one’s natural rights) predominate.</p>	<p>The government, based on the will of the people as expressed through their representatives, is obligated to provide a set of predetermined services. Government <i>duties</i> are established through the legislative process, with well-defined limits and boundaries.</p> <p>Government duties are foundational to a contractarian framework, in which citizens mutually agree to cooperate and be governed with the goal of maximizing self-interest in exchange for services provided by government. Citizens sacrifice some of their natural rights in order to receive other benefits for the good of all.</p>