Viewpoint

Ethics, politics and the right to health care in America

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Unique among economically advanced democratic market economies, the United States fails to provide universal health care protection. While policy makers and ethicists in other wealthy nations debate the challenge of how to limit health care expenditures in an equitable manner and engage the question of how much inequality in access to care can warrant a claim of injustice, in the United States the "right" to health care as a matter of social policy remains a contested matter.

Although it was hardly a central concern, from its very beginning in the 1970s, American bioethicists were compelled to address the broad failures of the US health care system to meet even the most basic conceptions of equity or fairness. While there were some libertarians who asserted that the state bore no responsibility for assuring access to needed medical services, they were the exception. Norman Daniels, who in the new millennium would come to recognize the critical importance of social inequality as a fundamental driver of inequities in health status, made his mark in the 1980s by drawing on John Rawls to assert that justice imposed a collective duty to provide access to health care services. In framing that outlook he drew upon the centrality of equal opportunity to America's social ethos. Daniels famously wrote "the central moral importance of preventing and treating disease and disability with effective health care services derives from the way in which protecting moral function contributes to protecting opportunity" [1].

Although those who sought a fundamental transformation in the US health care system commonly invoked the notion of a right to health care, they faced both political and ideological resistance, a resistance that in important ways reflected skepticism about the role of the state as a guarantor of social welfare and about the very idea of positive as contrasted with the negative rights protected by the American constitution.

Three decades ago the U.S. President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research explicitly rejected the language of rights in its 1983 report Securing Access to Health Care: The Ethical Implications of Differences in the Availability of Health Services. Comprised largely of political appointees hostile to the Welfare State, the Commission found it almost impossible to provide the moral foundations for confronting the gross disparities that characterized the US health care system. The Chair made clear that he would resist the claim that there is a right to health care. "Wherever you speak of a right in a common law country, and you are speaking as a presidential Commission common law courts can pick up [your recommendation] and then develop law around [it]." The moral right would then become a legal right. "[We] want to avoid that." The Commission's executive director Alexander Capron, a foundational figure in American bioethics, sought to reassure the commissioners by asserting that the role of government should be viewed "as a last resort" [2].

Over the past half century these themes would punctuate every major national debate on reforming the US health care system in order to address the profound and obvious inequalities. While public opinion polls have made clear support for the idea that no citizens should be denied health care because of the inability to pay, specific proposals to realize this idea would routinely confront distrust of government and especially the federal government in Washington. This was true at the end of World War II when President Harry Truman, a Democrat, proposed a national health insurance plan; in the mid-1960s when President John Kennedy and Lyndon Johnson advanced proposals, ultimately successful, to cover the very poor (Medicaid) and those over 65 years of age (Medicare); in the 1970s when President Richard Nixon, a Repub-lican, proposed far-reaching policies to make health care coverage more affordable and equitable; and finally when in the 1990s President Bill Clinton, a Democrat, proposed an ambitious reform plan that built upon the extant role of private health insurance providers.

It was against this backdrop of political failures that Barack Obama, in 2008, then a candidate for the Presidency of the US, declared that access to affordable health care "should be a right for every American. In a country as wealthy as ours [there is something fundamentally wrong] that people are going bankrupt because they can't pay their medical bills" [3].

What were the realities of American health care that Obama would seek to address once he was elected President? According to the U.S. Census Bureau in a 2010 report, fifty million Americans had no health insurance, 18.4% of those under 65 years of age (virtually all of whom were covered by the Medicare plan enacted in 1965). A steep social gradient characterized the uninsured: 26.9% of those from households with income less than $25 000, but only 7.8% of those with incomes above $75 000 were unprotected.

A report from the Commonwealth Fund placed the US picture in global perspective. When asked whether they had forgone seeing a physician for a medical problem

or did not fill a prescription because of the cost in the prior year, 19% of Americans said "yes". That was true for 3% of the French, 4% of Swedes, 5% of British and 6% of Swiss [4].

Despite the powerful and uncontested evidence of inequities in health care, the Obama reform proposal – the Affordable Care Act which sought to dramatically extend health insurance coverage to the poor and near poor and would subsidize the cost of health care for millions of middle income Americans – faced fierce resistance in the Congress. When it finally was enacted, the legislation required that all health plans allow young adults to enroll in their parents' insurance policy until they turned 26, prohibited the denial of insurance protection because of "preexisting conditions", required all employers with more than 50 workers to provide health insurance protection to their employees, created a mechanism that provided generous federal subsidies for the purchase of insurance by individuals not otherwise protected (indeed required that such individuals purchase such insurance) and made possible the dramatic extension of federal-state insurance protection (Medicaid) to the poor and near poor.

When the legislation was finally enacted, political opponents turned to the courts where they challenged the constitutionality of the act. At every juncture Obama invoked the language of rights. On June 25 2015, the final legal challenge to the Affordable Care Act was rejected in a 5–4 vote by the U.S. Supreme Court. On that occasion Obama stated, "Five years ago, after nearly a century of talk, decades of trying, a year of debate, we finally declared that in America, health care is not a privilege for a few, but a right for all." [5]

The new health care policy is still bitterly opposed by American conservatives. The most dramatic expression of continued resistance to the Affordable Care Act is that 20 states, governed by Republicans, have refused to extend protection under Medicaid despite the fact that the federal government had offered to virtually fully underwrite the costs. Estimates of the number of previously uninsured Americans who have gained protection vary widely between 7 million and 16.4 million. A recent report in the *New England Journal of Medicine* notes "groups that have historically been at the greatest risk for lacking insurance – young adults, Hispanics, blacks and those with low incomes – have made the greatest coverage gains. These changes are meaningful and unprecedented in the US health care system" [6]. But much remains to be done. 13.5% of blacks and 25.2% of Hispanics remained uninsured in 2014. That was true of 32% of poor Americans [7].

The ethical challenge thus remains enormous. The solution, however, will not be found in the discourse of ethicists. It will, at the end of the day, depend on the capacity of a political alliance to make real the promise of a "right to health care".

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