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Journal of Law and Health

Volume 4 | Issue 2

Symposium

1990

Introduction to Keynote Speaker Randall Bovbjerg

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Recommended Citation

Joel J. Finan, Introduction to Keynote Speaker Randall Bovbjerg, Symposium: Ohioans without Health Insurance: How Big a Problem - Are there Solutions, 4 J.L. & Health 121 (1989-1990)

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Introduction to Keynote Speaker Randall Bovbjerg

Erratum

The Journal of Law and Health regrets that several errors appear in Volume 4, Issue 2. First, the issue as printed omitted the text for page 126 that begins the discussion of Table 1. The omitted text appears below. At the far left is the "right to health," as exemplified by the World Health Organization.²⁰ This view holds that everyone by virtue of being human has a right to health. By "health" is meant the fullest well-being achievable - physical, mental, and social. This end of the spectrum emphasizes equality of outcome, full health for all. The state has a corresponding responsibility to fund the requisite medical care. To my knowledge, however, no society has implemented such a broad standard except perhaps as an ideal to be strived for. At the far right of the Table lies a much narrower right -- equality of opportunity to work for health benefits, with little or no public reallocation of resources. Real rather than rhetorical American policy lies almost at this extreme. Under this view, health coverage depends on work status: Workers and their dependants are expected to get workplace coverage designed by their employers and unions, but with public tax subsidy. ²⁰ Add to note 20 on page 127: Cf. also Finer, Introduction to Keynote Speaker, 4 J. LAW AND HEALTH 121 (1989-1990) (Declaration of Human Rights to similar effect).

II. INTRODUCTION TO KEYNOTE SPEAKER RANDALL BOVBJERG

BY JOEL J. FINER

A nation of millions of presently and potentially disabled, diseased, infected and mentally ill, without hope of adequate medical care, is a nation betraying its promise of meaningful liberty and equality for all. A nation that won't pay to cure the illnesses in its body suffers a palpable pathology in its soul.

There is probably no constitutional duty on the government to provide medical care; for the Court recently reaffirmed, in *DeShaney*,¹ the current Court's view of our Constitution as prohibiting governmental wrongs rather than granting entitlements from the government.

We say there is a moral duty to provide medical care to those who cannot afford such care. Where does the moral right to receive basic medical care come from?²

Moral philosophers who recognize the fundamentality of basic medical services make their cases from various perspectives.

First, some philosophers simply justify their moral conclusion on the basis of intuition. Others, basing their judgment on their understanding of conventional mores, objectively rather than subjectively arrived at, deemed a 'basic' or 'fundamental,' observe that the right to medical care and treatment has been given the widest, formal recognition. It is ringingly acclaimed in the most broadly underwritten set of fundamental human rights: The United Nations' Universal Declaration of Human Rights, particularly Article 25:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services.

A straight deontological³ approach would ask whether the consequences of recognizing this right are more preferable than the consequences of not recognizing it. Surely a society that is medically sound is more fit for activities and experiences and choices that maximize life's goods, than a society medically disabled in various ways.

¹ *DeShaney v. Winnebago County Dept. of Social Services*, 489 U.S. 189 (1989) (Court held that Constitution does not require government to protect citizens against each other; it grants protection of citizens against government. Our Constitution is interpreted not as assuring any set of entitlements against government, but as enjoining government from infringing on our lives, liberties and property in various ways. Thus, there was no constitutional violation in failure of social welfare agency to protect child against severely abusive father who beat child into a neurological pulp.).

² Some of the thoughts herein were generated by Edelman, *The Next Century of Our Constitution: Rethinking Our Duty to the Poor*, 39 HASTINGS L.J. 1 (1987).

³ See T. BEAUCHAMP & J. CHILDRESS, *PRINCIPLES OF BIOMEDICAL ETHICS* 26 (3d ed. 1989).

According to the social contract theory, those in the original position strike a bargain, giving up total freedom in exchange for protection or other goods for themselves, should they find themselves in need. America's poor, particularly the medically indigent, should be among the beneficiaries of such a bargain but clearly they are not. Given a choice, they would never have agreed to any arrangement which could deprive them or their descendants of medical necessities essential to their physical and psychological health. To give up the state of nature for the state of untreated diseases and disabilities would be to give up a pre-society, no-deal position for a post-society raw deal position.

We all have a need for wellness as a condition to self-realization, including realization of that deeper self that finds spiritual meaning in the giving to others. And if we are physiologically or psychologically dysfunctional, we can hardly participate in the debates and decisions of the body politic in the substantially involved way the framers intended us to.

Whatever one believes about the etiological or philosophical bases of human rights, two things should be clear: one - human beings are morally entitled to certain basic rights; and two - one of those morally requisite rights is the right to medical care.

In reading some of the voluminous scholarship of our Keynote Speaker, particularly in the area of medicine and economics, I've been impressed with thought he has given to implementing the rights of the medically indigent. He has authored or co-authored and published three books, twenty-seven articles, five chapters, two book review essays and two abstracts. His work is a model from which other scholars can learn.

Presently serving as Senior Research Associate, Health Policy Center, at The Urban Institute in Washington, D.C., associated with Indiana, Duke and Maryland Universities, and Associate Editor of the Journal of Policy Analysis and Management, our Keynote Speaker is a 1971 graduate of Harvard Law School, where he was a Felix Frankfurter Scholar, and a 1968 graduate of the University of Chicago, where he graduated with highest honors.

Ladies and gentlemen on behalf of the sponsors of this Inaugural Conference of the Law and Public Policy Program, I am proud to present our Keynote Speaker: Randall R. Bovbjerg.