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The Right to Health

by Sarah Friedmann

Introduction

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

- (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;*
- (b) The improvement of all aspects of environmental and industrial hygiene;*
- (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;*
- (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness*

(International Covenant on Economic, Social and Cultural Rights, Article 12).

The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social conditions (World Health Organization Constitution—Preamble).

Health is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity. The realization of the right to health may be pursued through numerous, complementary approaches, such as the formulation of health policies, or the implementation of health programmes developed by the World Health Organisation (WHO), or the adoption of specific legal instruments. Moreover, the right to health includes certain components which are legally enforceable (ICESCR General Comment 14, The Right to Highest Attainable Standard of Health (Article 12) General Comment No. 14 (11/08/00) (E/C.12/200/4) (paragraph 1).

In the human rights discourse and practice the right to health has been and continues to be a contentious arena. Primarily located within legal frameworks that focus on civil and political rights, the right to health is more frequently being used to challenge abuses of health by invoking social and economic rights, even though this places the right to health on slippery terrain that is not as internationally accepted as civil and political rights.

Likewise, access to healthcare is often incorrectly cast as synonymous with the right to health. However, while this remains true in some ways (particularly when it comes to social and economic inequities in healthcare access) the right to healthcare should not be viewed as categorically the same. In practice, the right to health is often favored, as the right to health care is seen as too narrow in focus. At the same time, the right to health is also seen as too demanding, because for some it

implies a right to be perpetually healthy, which is an impossible standard. In turn, the right to health care is too narrow to include important factors like safe environmental conditions or adequate sanitation. Thus, the right to health is an umbrella term that implies a variety of practical requirements.

Ethical Considerations

Austin, Sarah E. 2001. Medical Justice: A Guide to Fair Provision. New York: Peter Lang.

This book problematizes several theories of health care distribution. The author examines the implicit principles of health care distribution in the United States claiming that if these principles were strictly observed, the resulting distribution might be fairer. Throughout the author utilizes John Rawls' Theory of Justice, as well as Norman Daniels' extension of it.

Austin, W. 2001. "Using the Human Rights Paradigm in Health Ethics: The Problems and the Possibilities." *Nursing Ethics* 8 (3): 183-196.

Abstract: Human rights are arguably the most globalized political value of our times. At the same time, human rights has been criticized on the grounds that it is legal, individualistic and universal assumptions are particularistic. This discussion is relatively new to health discourses. Proponents claim it has a relative advantage by framing health as an entitlement rather than a commodity. The problems and the possibilities of a rights approach in addressing health ethics issues are explored in this article.

Evans, Tony. 2002. "A Human Right to Health?" *Third World Quarterly* 23 (2): 197-216.

A right to health is one of a range of socio-economic rights for which many states have accepted an obligation under international law. However, in practice socio-economic rights are rarely given the same status as civil and political rights. This article discusses the rationale for rejecting socio-economic rights and examines the basic rights challenge to such neoliberal arguments. The article concludes with an examination of the potential for promoting a right to health in a globalizing world.

Wikler, Daniel. 2002. "Personal and Social Responsibility for Health." *Ethics and International Affairs* 16 (2): 47-55.

Wikler argues that personal responsibility for securing health should play a peripheral role in health policy. The notion of personal responsibility for health involves philosophical concerns such as free will, voluntary action, and social responsibility. Wikler argues that demanding individuals to secure their own health impinges on human rights. It is concluded that while health policy should allow for individual choices in health outcomes, such a course must be pursued cautiously.

The Right to Health and Inequities

Here, the texts selected address different inequities that have led to an abortion of respect for human rights. Beside an introductory section, these problem areas include Gender, Race/Ethnic, Economic, Access to Health Care. We have also provided a section on how International Institutions have contributed to these problems.

General

Guimón, José. 2001. Inequity and Madness: Psychosocial and Human Rights Issues. New York: Kluwer Academic / Plenum Publishers.

Abstract: Inequity and Madness addresses the two most important notions concerning the rights of people with mental illness: first, that human rights and duties are complementary and that both must be considered in constructing a framework for mental health care. Second is that we must strive for equity in developing mental health programs.

Leary, V. 2000. "Concretizing the Right to Health: Tobacco Use as a Human Rights Issue," in F. Coomans, et al (eds.) Rendering Justice to the Vulnerable: Liber Amicorum in Honour of Theo van Boven. The Hague: Kluwer Law International.

Mann, Jonathan A.; Sofia Gruskin; Michael A. Grodin; and George J. Annas (eds.). 1999. Health and Human Rights: A Reader. New York: Routledge.

This comprehensive reader contains a wealth of information on varying topics within the "health and human rights" dialogue, divided into the following sections: "Human Rights and Public Health," "The Impact of Health Policies and Programs on Human Rights," "Health Impacts Resulting from Violations of Human Rights," "Exploring the Inextricable Linkage Between Health and Human Rights," "Medicine and Human Rights," and "How to Proceed from Concept to Action," as well as appendices of important documents.

Gender

Mertus, Julie; Mallika Dutt; and Nancy Flowers. 1999. Local Action, Global Change: Learning about the Human Rights of Women and Girls. New York: UNIFEM.

Published by UNIFEM and the Center for Women's Global Leadership, Local Action, Global Change looks at the many ways that human rights intersect with issues particular to women and girls, including reproduction and sexuality, non-discrimination and education. Of special interest is Chapter 4, which covers "Women's Human Right to Health." Includes a foreword by Charlotte Bunch.

Miller, A.; A.J. Rosga; and M. Satterthwaite. 1999. "Health, Human Rights, and Lesbian Existence," in Jonathan A. Mann, Sofia Gruskin, Michael A. Grodin, and George J. Annas (eds.), Health and Human Rights: A Reader. New York: Routledge: 265-280.

Abstract: Modern human rights, born in the aftermath of the second world war and crystallized in the Universal Declaration of Human Rights in 1948, reflect a broader, societal, approach to the complex problem of well-being. While health is mentioned only once in the document, human rights are about the societal preconditions for physical, mental and social well-being. Health care professionals are generally unaware of the key concepts, meaning and content of modern human rights. But they are learning that promoting and protecting human rights may be essential for promoting and protecting health. Health and Human Rights: A Reader, including contributions by doctors, lawyers and government representatives, is the first comprehensive anthology of essays in this new field to address the balance between public health and human rights awareness. The essays in this collection cover issues including ethnic cleansing, world population policies, women's reproductive choices, the Nuremberg Code and AIDS and HIV policies and treatments. It is an essential introduction to the developing field of health and human rights.

Misra, Geetanjali; Ajay Mahal; and Rima Shah. 2000. "Protecting the Rights of Sex Workers: The Indian Experience." *Health and Human Rights* 5(1): 89-115.

According to the authors, India fails to protect the human rights of female sex workers, particularly their ability to access health care and protect themselves against HIV infection.

Petchesky, Rosalind. P. 2003. Global Prescriptions: Gendering Health and Human Rights. London; New York: Clarendon.

Global Prescriptions is an analysis of women's efforts to affect health policy at both international and national levels. This book is a major contribution to contemporary debates on gender, health and human rights in a post-9/11 world dominated by militarism. Key topics include a discussion of the U.N. conferences on women, HIV/AIDS and human rights, transnational women's movements and globalization.

Spectar, J. M. 2001-2002. "The Hydra Hath but One Head: The Socio-Cultural Dimensions of the AIDS Epidemic and Women's Right to Health." *Boston College Third World Law Journal* 21: 1-34.

While the "right to health" in international law is often defined as "the right to the highest attainable standard of health," there are varying views on its content and states' minimal obligations. With NGOs, the international community should mobilize resources and develop prevention strategies to protect women from HIV/STDs through the development of safe and affordable contraceptives. The appropriate international institutions should collect data on the health of women, with the goal of compiling a study of the impact of HIV/AIDS on women. Efforts at the international level must encourage an awareness of effects of traditional practices affecting women's health, increasing vulnerability to HIV/STDs, and intensify efforts to eliminate such practices.

Race/Ethnic

Fiscella, Kevin; Peter Franks; Marthe R. Gold; and Carolyn M. Clancy. 2000. "Inequality in Quality: Addressing Socioeconomic, Racial and Ethnic Disparities in Health Care." *Journal of the American Medical Association* 283 (19): 2579-2584. (Crosslisted with **Poverty / Economic**.)

Mesri, Parastoo Anita. 2003. "The Violation of the Human Right to Health as a Factor in the Zapatista Revolution of Chiapas, Mexico." *Tulsa Journal of Comparative and International Law* 10 (473).

Abstract: This article will examine the revolution led by the Ejercito Zapatista de Liberacion Nacional (EZLN, Zapatista National Liberation Army) in Chiapas, Mexico.... Specifically, the lack of the human right to health was one of the objective conditions which existed in Chiapas that led to the armed uprising by the indigenas.... If one remembers the two parts which make up the right to health, this means that to achieve this goal, Mexico must not only provide sufficient health care services to the people of Chiapas, but also ensure that the underlying preconditions for health are met, including access to potable water, electricity, sanitation, housing, and education....

Salama, P.; B. Laurence; and M. Nolan. 1999. "Health and Human Rights in Contemporary Humanitarian Crises: Is Kosovo More Important Than Sierra Leone?" *British Medical Journal* 319 (7224): 1569-1572.

Turning their focus 'beyond Europe', the authors highlight the link between the systematic abuse of human rights and humanitarian crises while emphasizing the ensuing health effects of these dilemmas. Special attention is paid to sexual and reproductive health, the brutalization of children and mental health issues.

Smith, Martin. 1996. *Fatal Silence?: Freedom of Expression and the Right to Health in Burma*. London: Article 19.

While addressing the connections between the lack of freedom of expression and health in Burma, Smith addresses international legal mechanisms, treaties and the state of health rights in Burma in chapter 2. Other chapters of interest focus on conflict and humanitarian crisis, the health of prisoners/detainees, AIDS and narcotics and women's health, as well as an overview of the Burmese health system.

United Nations. 2001. "Migrants' Right to Health." UNAIDS Best Practice Collection. Geneva: Joint United Nations Programme on HIV/AIDS.

Abstract: This UNAIDS report argues for changes to improve migrants' health at global, national and local levels by outlining key existing laws, policies and best practices. Such changes include acknowledgment of the right to the highest attainable standard of physical and mental health; attention to and compliance with international treaties and customary law; application and compliance with the International Health Regulations; measures to ensure countries have joint health programmes for migrants; and prevention in health service policy; attention to gender disparities.

Economic

Farmer, Paul. 1999. Infections and Inequalities: The Modern Plagues. Berkeley: University of California.

Farmer utilizes a biosocial critique to examine inequalities in the distribution and outcome of infectious diseases, as well as exploring social responses to infectious diseases. He engages an in-

depth discussion of varying intersections between gender, HIV, tuberculosis, and the lack of (health) rights for the poor. Special attention is paid to Haiti throughout.

Farmer, Paul. 1999. "Pathologies of Power, Rethinking Health and Human Rights." *American Journal of Health and Human Rights* 89(10): 1486-97.

Abstract: The field of health and human rights has grown quickly, but its boundaries have yet to be traced. Fifty-one years after the Universal Declaration of Human Rights, consensus regarding the most promising directions for the future is lacking; however, outcome-oriented assessments lead us to question approaches that rely solely on recourse to formal legal and civil fights. Similarly unpromising are approaches that rely overmuch on appeals to governments: careful study reveals that state power has been responsible for most human rights violations and that most violations are embedded in "structural violence"--social and economic inequities that determine who will be at risk for assaults and who will be shielded. This article advances an agenda for research and action grounded in the struggle for social and economic fights, an agenda suited to public health and medicine, whose central contributions to future progress in human rights will be linked to the equitable distribution of the fruits of scientific advancement. Such an approach is in keeping with the Universal Declaration but runs counter to several of the reigning ideologies of public health, including those favoring efficacy over equity.

Farmer, Paul. 2003. *Pathologies of Power: Health, Human Rights, and the New War on the Poor*. Berkeley: University of California.

Abstract: Written by a preeminent activist and scholar in the field of health and human rights, Farmer utilizes his experiences as a medical doctor and anthropologist to look at the connections between structural violence and gross violations of human rights, particularly those that affect the health of poor people. Farmer uses his work in Haiti, Cuba, Guatemala and Russia as examples in his critiques of market-based medicine, as well as looking at drug-resistant tuberculosis, AIDS and the need for a greater focus on social and economic rights. Includes a foreword by Amartya Sen.

Fiscella, Kevin; Peter Franks; Marthe R. Gold; and Carolyn M. Clancy. 2000. "Inequality in Quality: Addressing Socioeconomic, Racial and Ethnic Disparities in Health Care." *Journal of the American Medical Association* 283(19): 2579-2584.

Gibbons, Elizabeth; and Richard Garfield. 1999. "The Impact of Economic Sanctions on Health and Human Rights in Haiti, 1991 to 1994." *American Journal of Public Health* 89(10): 1499-1504.

This report examines the impact of the 1991-1994 economic embargo on health, wellbeing, and human rights in Haiti. The authors found that declining income, rising unemployment, poorer nutrition, declining infant mortality, rising mortality among 1- to 4-year-olds, decreased attention to children's well-being and education, and family breakdown were all results. Poor Haitians responded to the crisis by resorting to dietary habits, informal-sector economic activity, moving in with relatives, selling domestic goods, increased informal unions among couples, decreased school attendance, and indentured servitude among children. The authors conclude that the implementation of economic sanctions in Haiti resulted in extensive violations of rights with the greatest impact on the most disadvantaged Haitians.

Laurell, Asa C. 2001. "Health Reform in Mexico: The Promotion of Inequality." *International Journal of Health Services* 31(2): 291-321.

The Mexican health reform is best understood in the context of national neoliberal structural adjustment. The strategy to transform the predominantly public health care system into a market-driven system has been a complex process with a hidden agenda to avert political resistance. The compulsory social security system is the key sector for those interested in opening health care to private insurance companies, health maintenance organizations, and hospital enterprises mainly from abroad. Despite the government's commitment to universal coverage, equity, efficiency, and quality, the empirical data analyzed in this article do not confirm compliance with these objectives. Although an alternative health policy that gradually grants the constitutional right to health would be feasible, the new democratically elected government will continue the previous regressive health reform.

Right to Health and Access to Healthcare

American Medical Student Association. 2000. "Health Care Should Be Recognized as a Basic Human Right," in James D. Torr (ed.), *Health Care: Opposing Viewpoints*. San Diego: Greenhaven.

Abstract: ...The American Medical Student Association, an activist organization for physicians-in-training, argues that the United States is lagging behind other industrialized nations in recognizing health care as a right. The authors emphasize the number of Americans that lack health insurance, and point out that several other nations provide universal health coverage to their citizens ... The authors conclude that the United States should amend the Constitution to include universal health coverage as an innate human right.

Annas, George J. 2003. "The Right to Health and the Nevirapine Case in South Africa." *New England Journal of Medicine* 348(8): 755.

Abstract: The author ... makes observations about the right to health care in South Africa and the court victory of AIDS activists in the case of giving nevirapine to HIV-infected persons," including the "[p]erception that health is linked to human rights; the controversy over the South African government's restriction of the use of nevirapine to prevent the transmission of HIV from mothers to infants; [and the] [q]uestion of whether the Constitutional Court can be accused of taking on the role of the Health Department in deciding how money should be spent on health care.

Botbol-Baum, M. 2000. "The Shrinking of Human Rights: The Controversial Revision of the Helsinki Declaration." *HIV Medicine* 1(4): 238-46.

Abstract: The right of access to health care for HW patients in developing countries has been weakened by the 1999 revision of the Helsinki Declaration. There is a dichotomy between discussions of human rights and liberal international public health policy. Utilitarian ethics, devoid of a sound notion of universal justice, encourage discrimination against economically vulnerable patients in developing countries. Greater coherence is needed between ethical principles and practical issues, particularly with regard to scientific research.

Buchner, Florian; Manfred Wildner; and Anna Brunner. 2001. "Health Rights Dimensions are Part of a Valid Evaluation of Health Insurance Programmes in Rural Guatemala." *Critical Public Health* 11(4): 341-46.

Abstract: The interconnection between health and human rights is receiving increasing attention. Health rights aspects, especially regarding equitable access and participation, appear as important dimensions for the evaluation of health insurance programmes in developing countries. The study objective was to relate empirically derived dimensions of evaluation to human rights aspects. The evaluation of three health insurance programmes implemented in rural Guatemala was related to human rights aspects in the context of a cost-utility analysis. The empirically identified outcome dimensions solidarity, proportion insured and equitable access relate to the health right dimension equity/ non-discrimination. The outcome dimensions financial sustainability and independence relate to participation, and adequate medical care - both curative and preventive - relates to the preservation of human dignity and equity. Fundamental dimensions of health rights/ human rights are integral and important components of the evaluation of health insurance systems.

Daniels, Norman; Bruce P. Kennedy; and Ichiro Kawachi. 1999. "Why Justice is Good for Our Health: The Social Determinants of Health Inequalities." *Dædalus* 128(4): 215-251.

Abstract: This article ... [f]ocuses on justice as a social determinant of health inequalities in the United States; [the] [r]elationship between social inequalities and health inequalities; [the] [v]iews of researchers Margaret Whitehead and Goran Dahlgren on health inequities; [t]heories on justice as fairness; [and] [s]ocial policies on reducing socioeconomic disparities in health.

Exter, Ander Den and Herbert Hermans (eds.). 1999. The Right to Health Care in Several European Countries. The Hague: Kluwer Law International.

Based on papers from the 1998 expert meeting at Erasmus University's Department of Health Policy and Management, this book broaches the topic of the right to health care on the European continent from differing perspectives. Areas covered include differing international and national views, the role of differing legal principles and the function of the courts, and organizational issues.

Hessler, K. and A. Buchanan. 2002. "Specifying the Content of the Human Right to Health Care," in Rhodes, Battin, and Silvers (eds.), Medicine and Social Justice: Essays on the Distribution of Health Care. Oxford: Oxford University.

The authors provide an interesting account of the "right to health" in connection with access to health care. Rather than attempting to define the exact content of the human right to health (care), they emphasize that "health is a complex good, promoted and protected by much more than services provided by medical professionals."

International Institutions and Organizations

de Wildt, Gilles; M. Rowson; Marjan Stofferes; and Meri Koivusalo. 2001. "Which Comes First: Health or Wealth?" *Lancet* 357(9262): 1123-24.

Abstract: This article [f]ocuses on the alleged lack of protection of basic human rights, particularly the right to health, by international organizations such as the World Bank, the International Monetary Fund (IMF), and the World Trade Organization (WTO)." Topics include "[t]he effect of policies instituted by these organizations on health care in less-developed nations; [c]riticism voiced by branches of the United Nations; [and] [m]ention of

a meeting which will challenge the notion that international financial institutions are above international human rights.

Doebbler, Curtis F. 2001. "The Right to Health of Children and the World Bank." *Health and Human Rights* 5(2): 121-146.

Abstract: The right to health of children is recognized by every country in the world. Nevertheless, the resources necessary to achieve respect for this right are lacking in many countries. Realizing this, the international community has increasingly recognized the role of intergovernmental actors in promoting health. The World Bank is one of these intergovernmental actors. In recent years, the World Bank has become the largest investor in health in Africa. At the same time, the Bank remains constrained by its mandate & policies. These constraints are in part a result of the Bank's failure to adopt a human rights approach to child health. The Bank's policy emphasizes temporal needs & competing priorities that often undermine the right to health.

Hunt, Paul. 2002. "The Right to Health: From the Margins to the Mainstream." *Lancet* 360(9348): 1.

Written by the first U.N. Special Rapporteur on the right to health, the article focuses on how the right to health has been advanced in 2002, in light of Human Rights Day. Topics include developments in the South African litigation over access to HIV/AIDS drugs; the decision of the United Nations (UN) to establish a mechanism for the right to health; the special rapporteur's consultations with states and civil society organizations; and the use of the language of human rights by the World Health Organization.

Loff, Bebe and Sofia Gruskin. 2000. "Getting Serious about the Right to Health." *Lancet* 356 (9239): 1435.

This short article focuses on the United Nations Committee on Economic Social and Cultural Rights' General Comment on the Right to Health. The purpose of this document is to ensure government responsibility and accountability for health under the human-rights framework; to further detail the International Covenant on Economic Social and Cultural Rights; and why this publication is a milestone.

Mukherjee, Joia. 2004. "Basing Treatment on Rights Rather than the Ability to Pay: 3 by 5." *Lancet* 363(9414): 1071-3.

The author focuses on the WHO/UNAIDS "3 by 5" initiative, which has the goal of bringing antiretroviral treatment to three million people before the end of 2005. Topics covered include the cost of the initiative; the number of countries targeted for the program; consideration of the ability of a human rights approach to provide universal access to AIDS treatment; the need for financial assistance from international agencies and the donor community; and the rights-based goals of the 1978 Alma-Ata declaration.

Spectar, J. M. 2001-2002. "The Hydra Hath but One Head: The Socio-Cultural Dimensions of the AIDS Epidemic and Women's Right to Health." *Boston College Third World Law Journal* 21: 1-34.

While the "right to health" in international law is often defined as "the right to the highest attainable standard of health," there are varying views on its content and states' minimal obligations. The international community should mobilize resources and develop prevention

strategies to protect women from HIV/STDs through the development of safe and affordable contraceptives. The appropriate international institutions should collect data on the health of women, with the goal of compiling a study of the impact of HIV/AIDS on women. Efforts at the international level must encourage an awareness of effects of traditional practices affecting women's health, increasing vulnerability to HIV/STDs, and intensify efforts to eliminate such practices.

Wojahn, Patrick L. 2002. "A Conflict of Rights: Intellectual Property under TRIPS, the Right to Health and AIDS Drugs." *UCLA Journal of International Law and Foreign Affairs* 6: 463-497.

In 1979, the WHO's "Health for All" strategy articulated a "core content" of the right to health, including a set of elements which could be considered "most essential" from a human rights perspective. Included in this "core content" were the appropriate treatment of common diseases and injuries, and the provision of essential drugs. Often, though, a pharmaceutical manufacturer's "reasonable expectations" of return from sale in a developing country would not require full recovery of the research and development costs of a drug.

United Nations. 2001. "Migrants' Right to Health." UNAIDS Best Practice Collection. Geneva: Joint United Nations Programme on HIV/AIDS.

This UNAIDS report argues for changes to improve migrants' health at global, national and local levels by outlining key existing laws, policies and best practices. Such changes include acknowledgment of the right to the highest attainable standard of physical and mental health; attention to and compliance with international treaties and customary law; application and compliance with the International Health Regulations; measures to ensure countries have joint health programs for migrants; and prevention in health service policy; attention to gender disparities.

United Nations High Commissioner on Human Rights. 2002. Economic, Social and Cultural Rights: Prevention of Discrimination, Specific Human Rights Issues. Document no. E/CN.4/Sub.2/2004/45.

Written in conjunction with the World Health Organization, the report focuses on key human rights areas, including the right to health under economic, social and cultural rights. Other pertinent areas discussed include human rights and extreme poverty; human rights and globalization; the right to water; and bioethics.

Legal Frameworks

This portion of the bibliography examines how health has been understood within the conventional language of Civil and Political and Economic, Social, and Cultural Rights.

Legal Frameworks: Civil and Political Rights

Cullet, Philippe. 2003. "Patents and Medicines: The Relationship between TRIPS and the Human Right to Health." *International Affairs* 79(1): 139-60.

Abstract: The question of access to drugs in developing countries is at present largely influenced by the TRIPS Agreement. TRIPS compliance in the field of health requires substantial changes to existing patent laws in some countries. These changes must be analyzed in the context of the spread of epidemics like HIV/AIDS and in relation to other international obligations that states have, for instance, with regard to the human right to health. Intellectual property rights treaties today significantly impact the realization of some human rights like the right to health. This article examines the extent to which TRIPS encompasses flexibility for developing countries to be able to foster better access to medicines. It also examines these issues from the point of view of human rights and considers, in particular, the ways in which the relationship between human rights and intellectual property can be improved in international law.

Curry, Lynne. 2002. *The Human Body on Trial: A Handbook with Cases, Laws and Document*. Santa Barbara, CA: ABC-CLIO.

On Trial explores the critical health-related political, economic and social issues facing America today from a legal perspective. Each volume offers a host of ways for readers to get the full legal story: survey essays examining all sides of the controversy; specific case studies; future outlooks; key legal documents; topical entries on critical issues, events and individuals; timelines; glossaries of legal terms; and an extensive annotated bibliography.

Eze, Osita and Eze Onyekpere. 1998. *Study on the Right to Health in Nigeria*. Lagos: Shelter Rights Initiative (SRI).

Abstract: This study, which is a product of the Lawyers for Socio-Economic Rights Network Programme (LASER) of the Shelter Rights Initiative, is geared towards the empowerment of the legal profession in understanding the various perspectives of using law for the realization of the right to health ... [t]he study provides the framework for a proper appreciation of the layers of rights and duties involved in the enjoyment of the best attainable state of physical and mental health ... Recent health policies are discussed, while the most in-depth part is on the sources of the law on the right to health. Contents also include the right to health of women, occupational health rights, children and the right to health and a historical narrative of health policies in Nigeria.

Gostin, Lawrence. 2001. "The Human Right to Health: A Right to the 'Highest Attainable Standard of Health'." *Hastings Center Report* 31(2): 29-31.

This article details the human right to health's embodiment in human rights law. Principally, these legal frameworks hold Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) concerning the right to health as the main source of human rights law in this area.

Hendriks, A. 1998. "The Right to Health in National and International Jurisprudence." *European Journal of Health Law* 5(4): 389-409.

Hervey, Tamara K. 2003. "The 'Right to Health' in European Union Law," in Hervey and and Jeff Kenner (eds.), *Economic and Social Rights under the EU Charter of Fundamental Rights: A Legal Perspective*. Portland, OR: Hart.

Abstract: The notion of a "right" to health is contentious and its utility or appropriateness may be called into question. As a result, the author explores the differences that a rights-based approach to health might make

within elements of EU law and policy with respect to the protection of human health. The article looks at a “right to health” making a difference in terms of resolution of conflicts; resource allocation; spheres of competence; and in terms of relationships between relevant actors and NGOs.

Kisa, A. and D. Tengilimoglu. 2002. “Patients’ Rights in Turkey.” *Clinical Research and Regulatory Affairs* 19(1): 55-63.

Abstract: Today, the social, economic, cultural, ethical, and political climate has given rise to an international movement which is re-evaluating the importance of patients’ rights. In Turkey, as competition continues to increase between public and private hospitals, the emphasis on presenting health care services in the most advantageous way has become a focal point of debate. As a result, patients’ rights issues are being actively discussed in both the private and public health care sectors in the country. In this study, the development of patients’ rights issues in Turkey is reviewed and the results of some selected descriptive studies are summarized. Suggestions are made toward policies for effective and efficient health care provision in terms of both broad and specific issues which have arisen in the field of patients’ rights.

Leary, Virginia A. 1994. “The Right to Health in International Human Rights Law.” *Health and Human Rights* 1(24): 28-32.

Abstract: This paper discusses the concept of the right to health in international human rights law. The phrase “right to health” is not a familiar one, although the Constitution of the World Health Organization and a number of international human rights treaties recognize the right to the “highest attainable standard” of health. The use of “right to health” terminology is discussed, and the language of international declarations and treaties referring to a right to health is cited. The author contends that approaching health issues through a rights perspective adds an important dimension to consideration of health status. The shorthand, “right to health”, emphasizes the link of health status to issues of dignity, non-discrimination, justice, and participation. The paper delineates the efforts of United Nations organs as well as human rights scholars and activists to develop the scope and obligations of the right to health. The relation of economic resources to its implementation is discussed. A section is devoted to the issue of the right to health in relation to women.

Tomaševski, K. 1996. “Health Rights,” in A. Eide, Catarina Krause and Allan Rosas (eds.), *Economic, Social and Cultural Rights: A Textbook*. Dordrecht; Boston; London: Martinus Nijhoff / Kluwer.

The author looks at two sets of international norms that relate to health: the protection of public health as grounds for limiting other human rights, and how the right to health creates entitlements for individuals and corresponding obligations for governments. By looking at the normative framework, the definition of access to health care, the confluence of medical ethics and human rights, balancing public health and human rights, as well as recent accomplishments at the time of this publication, the author provides an early outline of the important connections and issues of the right to health and human rights discourse.

Torres, Mary Anne. 2002-2003. “The Human Right to Health, National Courts, and Access to HIV/AIDS Treatment: A Case Study from Venezuela.” *Chicago Journal of International Law* 3: 105.

Numerous treaties and other international instruments have combined to form the right to health in international law. In this article, the author analyzes a 1999 decision of the Venezuelan Supreme Court in which the Court held the government’s failure to provide PLWHAs with

access to ARV therapies violated their right to health. Its ruling in this case is important as a guide for both Venezuelan constitutional law and Venezuelan state practice under international law on the right to health, specifically under the ICESCR. This case is also important for international law because it reaffirms the important role the right to health plays in overall public health discourse, even though health as a human right still has not penetrated Venezuelan political and popular culture.

Economic, Social, and Cultural Rights

Austin, Wendy. 2001. "Using the Human Rights Paradigm in Health Ethics: The Problems and the Possibilities." *Nursing Ethics* 8(3): 183-196.

Abstract: Human rights may be the most globalized political value of our times. The rights paradigm has been criticized, however, for being theoretically unsound, legalistic, individualistic and based on the assumption that there is a given and universal humanness. Its use in the area of health is relatively new. Proponents point to its power to frame health as an entitlement rather than a commodity. The problems and the possibilities of a rights approach in addressing health ethics issues are explored in this article.

Ely Yamin, Alicia. 1996. "Defining Questions: Situating Issues of Power in the Formulation of a Right to Health under International Law." *Human Rights Quarterly* 18(2): 398-438.

Focusing on the strategic and theoretical power relationships between human rights and health, the author requires activists to discern societal relations, combinations and alignments of power that produce and distribute disease and define the social state of illness, as well as opposition and resistance to power structures implicated in the "right to health."

Ely Yamin, Alicia. 2000. "Protecting and Promoting the Right to Health in Latin America: Selected Experiences from the Field." *Health and Human Rights* 5(1): 116-148.

Through a description of the four major challenges faced by Latin American human rights groups, this article seeks to incorporate their perspective and response into the discussion of how to make health a universally recognized human right. The ill-defined normative content of the right to health, the lack of precedents and procedures for enforceability, and the absence of consciousness of health as a right have all presented major obstacles to the implementation of the right in the region. Latin American human rights groups must move beyond traditional legal approaches and work in an interdisciplinary fashion with health professionals and grassroots health groups.

Ely Yamin, Alicia. 2003. "Not Just a Tragedy: Access to Medications as a Right under International Law." *Boston University International Law Journal* 21: 325.

Abstract: ... Nowhere is this more starkly true than in Sub-Saharan Africa where an estimated 29.4 million adults and children are living with HIV/AIDS. ... Any remaining possibility for individuals stricken with drug-resistant tuberculosis or malaria, HIV/AIDS, or severe mental illness to have choices and agency in their lives - which is both the underlying premise and promise of human rights - evaporates when access to medications is denied. ... Again, the possibilities for children developing or becoming agents in their own lives are drastically

reduced not merely by the fact of the disease, but by the absence of treatment to mitigate the necessarily social effects of the disease, whether it is tuberculosis, HIV/AIDS or malaria. ... As the right to life is not subject to progressive realization under international law, it can be invoked to underscore the urgency of taking immediate measures with respect to providing access to medications in HIV/AIDS and other cases. ... In this vein, a 2002 resolution by the U.N. Commission on Human Rights stated: "Access to medication in the context of pandemics such as HIV/AIDS is one fundamental element for achieving progressively the full realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."

Evans, Tony. 2002. "A Human Right to Health?" *Third World Quarterly* 23(2): 197-216.

Abstract: A right to health is one of a range of socio-economic rights for which states accept an obligation under international law. However, the politics of rights has meant that socio-economic rights are rarely given the same status as liberal freedoms associated with civil and political rights. This article discusses the liberal rationale for rejecting socio-economic claims as rights and examines the basic rights challenge to liberal arguments. Given the dominance of liberalism, the article concludes with an examination of the potential for promoting a right to health within the context of globalisation.

Littell, Amanda. 2002. "Can a Constitutional Right to Health Guarantee Universal Health Care Coverage or Improved Health Outcomes?: A Survey of Selected States." *Connecticut Law Review* 35(289): 289-318.

Abstract: 'Health' is an elusive notion, and a 'right' to health is an even more difficult concept to articulate or prescribe. Rather than an enforceable right to health promotion, this social right takes the form of a formal state obligation to set up health care facilities and thus allowing broad state discretion in the fulfillment of this right. Using case studies of Canada, and Britain, as well as other European nations, the author shows the variety and differences in how nations approach the right to health.

Redden, C. J. 2002. "Health Care as Citizenship Development: Examining Social Rights and Entitlement." *Canadian Journal of Political Science* 35(1): 103-26.

Abstract: ... This article examines the increasing popularity of rights claiming for health care, and argues that the "right to health care" has a non-possessive, normative nature that is at odds with legalistic individualistic rights claiming. This is a significant philosophical finding, one that informs the political debate over health care by revealing that legal rights claims are not sufficient to defend social entitlements. The conceptual project undertaken in this article illuminates directions of reform and suggests that differentiated citizenship provides a better model than legal rights to guide reform efforts.

Shah, Sheetal. B. 1999. "Illuminating the Possible in the Developing World: Guaranteeing the Human Right to Health in India." *Vanderbilt Journal of Transnational Law* 32: 435-467.

Abstract: This article ... argues that the recognition of the social right to health offers a step forward in empowering individuals to gain control over their social environments in the developing world. Part II discusses the potential of social human rights to alleviate suffering in the developing world; Part III explores the legal obligations of social rights and their current status in human rights jurisprudence; Part IV includes the social human right to health and its ability to empower individuals. Even though the right to health presents some of the most difficult conceptual and practical problems associated with social human rights, providing for the conditions necessary for good health is essential in allowing individuals to live with human dignity ... The final section addresses India's

experiment with litigating social rights, such as the right to health, and its potential use for the developing world

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Toebes, Bridgit. 1999. "Towards an Improved Understanding of the International Human Right to Health." *Human Rights Quarterly* 21(3): 661-679.

Toebes seeks to clarify where the right to health is situated in the Convention on Economic, Social, and Cultural Rights in order to contribute to continued implementation of this specific right. She does so by looking at definitional problems, international codification and current implementation practice. The author also outlines the scope of the right to health, as well as ensuing state obligations.

Wojahn, Patrick L. 2002. "A Conflict of Rights: Intellectual Property under TRIPS, the Right to Health and AIDS Drugs." *UCLA Journal of International Law and Foreign Affairs* 6: 463-497.

In 1979, the WHO's "Health for All" strategy articulated a "core content" of the right to health, including a set of elements which could be considered "most essential" from a human rights perspective. Included in this "core content" were the appropriate treatment of common diseases and injuries and the provision of essential drugs. However, a pharmaceutical manufacturer's "reasonable expectations" of return from sale in a developing country would not require full recovery of the research and development costs of a drug.

Professions

American Medical Student Association. 2000. "Health Care Should Be Recognized as a Basic Human Right," In J. Torr (ed.), *Health Care: Opposing Viewpoints*. San Diego: Greenhaven.

Abstract: ... The American Medical Student Association, an activist organization for physicians-in-training, argues that the United States is lagging behind other industrialized nations in recognizing health care as a right. The authors emphasize the number of Americans that lack health insurance, and point out that several other nations provide universal health coverage to their citizens ... The authors conclude that the United States should amend the Constitution to include universal health coverage as an innate human right.

Austin, Sarah E. 2001. *Medical Justice: A Guide to Fair Provision*. New York: Peter Lang.

This book problematizes several theories of health care distribution. The author examines the implicit principles of health care distribution in the United States claiming that if these principles were strictly observed, the resulting distribution might be fairer. Throughout the author utilizes John Rawls' Theory of Justice, as well as Norman Daniels' extension of it.

Austin, W. 2001. "Using the Human Rights Paradigm in Health Ethics: The Problems and the Possibilities." *Nursing Ethics* 8(3): 183-196.

Abstract: Human rights are arguably the most globalized political value of our times. At the same time, human rights has been criticized on the grounds that it is legal, individualistic and universal assumptions are particularistic. This discussion is relatively new to health discourses. Proponents claim it has a relative advantage

by framing health as an entitlement rather than a commodity. The problems and the possibilities of a rights approach in addressing health ethics issues are explored in this article.

Buchner, Florian; Manfred Wildner; and Anne Brunner. 2001. "Health Rights Dimensions are Part of a Valid Evaluation of Health Insurance Programmes in Rural Guatemala." *Critical Public Health* 11(4): 341-46.

Abstract: The interconnection between health and human rights is receiving increasing attention. Health rights aspects, especially regarding equitable access and participation, appear as important dimensions for the evaluation of health insurance programmes in developing countries. The study objective was to relate empirically derived dimensions of evaluation to human rights aspects. The evaluation of three health insurance programmes implemented in rural Guatemala was related to human rights aspects in the context of a cost-utility analysis. The empirically identified outcome dimensions solidarity, proportion insured and equitable access relate to the health right dimension equity/non-discrimination. The outcome dimensions financial sustainability and independence relate to participation, and adequate medical care - both curative and preventive - relates to the preservation of human dignity and equity. Fundamental dimensions of health rights/human rights are integral and important components of the evaluation of health insurance systems.

Evans, Tony. 2002. "A Human Right to Health?" *Third World Quarterly* 23(2): 197-216.

A right to health is one of a range of socio-economic rights for which many states have accepted an obligation under international law. However, in practice socio-economic rights are rarely given the same status as civil and political rights. This article discusses the rationale for rejecting socio-economic rights and examines the basic rights challenge to such neoliberal arguments. The article concludes with an examination of the potential for promoting a right to health in a globalizing world.

Gostin, Lawrence. 2001. "The Human Right to Health: A Right to the 'Highest Attainable Standard of Health'." *Hastings Center Report* 31(2): 29-31.

This article details the human right to health and its enforcement in human rights law. Legal frameworks covered include treaty-based schemes as the main sources of human rights law within the United Nations system; provision of Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) concerning the right to health; and the terms by which the ICESCR explicates the right to health.

Hall, Paul. 2002. "Doctors Urgently Need Education in Human Rights." *Lancet* 360(9348): 1.

The author examines the global campaign to integrate health and human rights in undergraduate and postgraduate medical training that was launched by Physicians for Human Rights-UK. The aims of the article are to anchor the physician-patient relationship to human rights principles; address disparities in health care access among racial and ethnic minorities in the U.S.; and to instill a new global ethical code that includes a right to health. It also covers reports from UNAIDS on discrimination in HIV/AIDS treatment in India.

McLeod, Eileen; and Paul Bywaters. 2000. *Social Work, Health and Equality*. New York: Routledge.

While written primarily for social workers, this book is an excellent resource for people outside the field due to its broad emphasis on inequalities in health access and rights. Chapters includes “Inequalities in Health: a Social Work Issues”, “Inequalities in Health: Oppression in Bodily Form “and “Developing a Political Presence”.

Wikler, Daniel. 2002. “Personal and Social Responsibility for Health.” *Ethics and International Affairs* 16(2): 47-55.

Wikler argues that personal responsibility for securing health should play a peripheral role in health policy. The notion of personal responsibility for health involves philosophical concerns such as free will, voluntary action, and social responsibility. Wikler argues that demanding individuals to secure their own health impinges on human rights. It is concluded that while health policy should allow for individual choices in health outcomes, such a course must be pursued cautiously.