

The International Right to Health Care: A Legal and Moral Defense

While it may seem obvious that the international right to health includes a right to health care as one of its constituent parts, recognition of an international human right to health care remains contentious. Proponents of an international right to health care face at least three issues. First, while the legal documents granting and specifying the content of the right to health refer to health care goods and services, the majority of the right's attendant duties relate to the social determinants of health. Health rights advocates in the international sphere likewise highlight the primary importance of social determinants. This suggests that any international right to health care will have limited scope at best. Second, the normativity of the international right to health is tied to the importance of certain benchmarks and indicators of health across populations, but both recognition of health rights and access to health care only weakly correlate with improved health outcomes. This suggests that the normativity of the international right to health may not justify an international right to health care. Third, very few international rights require states to create full systems to realize rights and the passages of international human rights law that support a right to health care seem to require states to create health care systems. The purported right to health care thus seems to fit uneasily with the structure of international rights. Stating that a broad right to health must include a narrower right to health care is an insufficient response to these concerns. In this work, I defend the international right to health care on textual and theoretical grounds. If successful, this defense will address all three of the issues with existing accounts.

My defense takes the form of two lines of argument. First, I argue that the plain text of the documents that create and interpret the right to health supports the idea of a right to health care. Contrary to critics' claims, the relevant provisions often highlight the importance of particular health care goods and services and create specific obligations for states to provide them. The provisions explaining these requirements are not tied only to a concern with improved health outcomes. They are also concerned with other foundational norms of international human rights law, such as dignity and equality, which require provision of basic health care and fair distribution of all health care resources. Second, in the alternative, I argue that even if the international right to health does not obviously include a right to health care as a matter of textual interpretation, such a right can be and should be developed from other international rights that share the right to health care's foundational concerns with dignity and equality. Interpretations of those rights support this argument. International law that is not concerned with human rights, including exceptions to the international intellectual property norms codified in TRIPS, likewise suggest that international law in general recognizes the primary importance of and right to health care.

These lines of argument explain how recognizing an international right to health care can avoid the first two concerns above. I then go on to explain how this approach avoids the third concern. While the international right to health care does require a minimally functioning health care system, international human rights law is generally agnostic as to the form that this system would take, allowing the right to coexist with the fundamental norms of state sovereignty undergirding international law more broadly. This agnosticism also highlights the way in which the health care system requirement is only a part of the broader right. The right is otherwise structurally identical to other economic, cultural, and social rights. There are, moreover, signs that other rights, such as the right to water, share the purportedly anomalous systemic duty element of the

international human right to health care and good reason to think that this feature should be a component of international rights. An outline of the argument for the content of the right, which I developed in a full-length article elsewhere and outline here, confirms this consistency.