

From the President: Another Modest Proposal: Universal Legal Care

Tamzin A. Rosenwasser, M.D.

It has been disturbing to realize that those in the government responsible for our health and happiness seem to have overlooked something. I speak of the complete silence on the problem of universal legal care.

Almost nobody in the United States has adequate coverage. Most have no coverage at all. There is no ELTALA Act (Acute Legal Treatment and Astute Legal Act) that would guarantee that in legal emergencies a person would be stabilized by a law office if adequate legal coverage were lacking, as it is for most of us. True, most physicians have medical liability coverage, and a few Americans have prepaid legal coverage, but it is usually a bare-bones policy. Others, usually the rich, have a lawyer on retainer, but that certainly is not the kind of coverage needed. It's a patchwork system at best.

Our legal system is broken.

It is a multi-tiered system with two main tiers, one for the rich and the other for the rest of us. It leaves our most vulnerable citizens in the dust as it pursues high-end clients.

The worst effects can be seen if we compare a common medical problem, say gall bladder attacks, to a common legal problem, for example, marijuana possession. A surgeon can remove the gall bladder, and the patient will be fine. But there is no comparable safety net for those with acute legal problems. Possession can ruin your life. There are thousands more laws now than there were even 50 years ago, not to mention back in 1900. There was no FBI until 1908.

If an uninsured patient comes to the emergency room (ER) with an acute problem, whether it is a deep venous thrombosis, a stab or gunshot wound, active labor, asthma attack, chest pain, peritonsillar abscess, abdominal pain, mental status change, a broken leg, or other acute problem, that patient must be, and will be taken care of, regardless of ability to pay.

Medical Results Have Greatly Improved

The acute ER and other medical cases, whether they lead to hospitalization or not, can be solved, or at least successfully treated, in the majority of cases. The patients are treated emergently, and then, if they cannot pay, are enrolled in taxpayer-funded welfare programs such as Medicaid (if they are 65 or older, they are already automatically enrolled in Medicare). In any case, once a deep venous thrombosis is treated, once a child is delivered, a small bowel obstruction is relieved, a broken leg casted, a gall bladder with stones removed, the patient can usually expect to return to good functioning, and often to the same state of health enjoyed before the medical malady.

Everyone must eventually die of something. But since 1900, when the average life span in the United States was 47 years, and now, when it is 77-78 years or so, science and medicine have engineered tremendous progress, so that people who once would have died relatively young can now live long, healthy lives.

At present, much of the disease and disability we see results from improvident decisions by people who might otherwise have been healthy. Gratuitous violence, excessive alcohol consumption,

poor diet, lack of activity, and so on lead to sickness or premature death. Bad decisions also do not occur in a moment of inattention. They occur over an extended period, during which plenty of opportunities for reformation occur. Society encourages bad lifestyle choices by socializing their cost. Whatever in human affairs becomes subsidized by another's efforts, money, time, and brains becomes more common.

We have encouraged a class that lives by parasitism, the mode of life of organisms that suck another's blood or steal their time and effort, like cowbirds who destroy the eggs of warblers, then lay their own eggs in the nests, tricking the warblers into rearing the raucous cowbird young. Although we find parasites repulsive, we have been bamboozled into supporting comparable behavior. For example, we subsidize families in which the father and his crucial role have been heedlessly deleted, thus enabling the creation of more such truncated families. We are twice victimized: first by having our own resources diverted by illegitimate government force, and then by the crimes often committed by children condemned by misplaced "compassion" to be born into dysfunctional families. Since we pay the medical bills and subsidize the lifestyle of petty criminals and ne'er-do-wells, we get more of them. It is a simple truism that the larger the proportion of people who are dependent on others, the weaker a society becomes.

Despite the fact that Americans often imperil their own health and lives by bad decisions, their medical problems are, thanks to scientific advances, far more amenable to prevention and therapy than ever before in human history.

Legal Outcomes Are Worsening

The crisis in our society is the tragedy of lives wrecked by the inability to pay legal fees required to deal not just with criminal matters, but with civil legal troubles that can ruin a family's finances and chances for a decent future.

The children are the most heartbreaking victims. If a father is arrested, let's say on some drug charge, maybe just for being present while drugs are being sold, his children are deprived of a father.

Not even the military in war can feel exempt. In the Haditha incident in Iraq, several U.S. Marines found themselves in a legal stew following some murky circumstances. After what must surely have been a shocking nightmare, charges against five of them were dismissed, one was judged not guilty, but will be tried again, and two remain in legal limbo.

I do not know what happened because I was not there, but a vehicle full of soldiers had just been blown up, four Marines had been tortured to death in the town before the incident, and 14 others had recently been killed there. Contrast that with the exoneration of police officers in the United States who state that they felt threatened by someone who reached toward a pocket. Should not Marines fighting a guerrilla insurgency have the same presumptions as a police officer?

People embroiled in legal problems can lose their homes and assets trying to defend themselves, or simply through "asset forfeiture." Their reputations may be ruined for life. They often have trouble finding jobs. They wind up in prison, sometimes for minor drug possession, and may be raped or brutalized there. They are separated from their families, and put through a tremendous stress. They suffer depression and anxiety.

Many of them, such as Suzette Kelo and the other parties in the Kelo case, are not embroiled in criminal matters but still suffer tremendous losses. These citizens lost their homes when the Supreme Court decided in June 2005 that the government authorities in New London, Conn., could take their homes to give to private parties to use for other purposes. In a fruitless effort to save their homes, they had to spend time and money, and suffer uncertainty and stress.

Frivolous suits are another class of cases. Eliot Spitzer, the disgraced former governor of New York, drained the wealth of thousands of people with his legal extortion, threatening companies who seem to have had no faith in the Rule of Law in early 21st century America, since they caved in to his threats.

As medical problems have become much more amenable to treatment, the opposite is true of legal problems. Formerly, only a few actions were *malum prohibitum*—legal violations merely because of prohibitive statutes, not because they demonstrably caused harm. But here at the dawn of the 21st century hundreds of activities admit legal prosecution: hair-braiding, smoking marijuana, having three rather than two dogs, or giving verbal medical advice if the state has not granted its license to do so. In some towns, living in your own home requires an “occupancy permit” from some petty official.

The Rule of Law, defined as “the doctrine that the government and all its agents are bound by well-defined laws, which are public and accessible, administered in accordance with defined procedural rules; that all people are bound by the same laws; and that every government act must have legal justification,” is frayed in the United States. The legal profession displays, to a shocking degree, a supine acquiescence in that state of affairs.

I point to the demonstrable fact that the majority in Congress, Senators and Representatives, are lawyers, and yet they have originated laws that directly contravene what we have, since the earliest years of the American Republic, proclaimed as the supreme law of the land, namely the U.S. Constitution.

Civil asset forfeiture laws are one example. They directly contravene the Fifth Amendment to the Constitution: “No person shall be...deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.” States are reported to have seized \$1.52 billion in 2007, much of it connected to drugs.

Not even connected to drug use by defendants was the case of the Delta Task Force of the Manatee County, Florida, Sheriff’s Department that preyed on people officials considered less than credible, planting drugs on them and arresting them, stealing their cars and money, and having the courts send them off to prison. Conflict of interest is clear, as the government agency gets to keep the money and goods it confiscates. A simple Internet search will reveal case after case of abuse.

A Universal Solution?

How can we solve the problem of lack of legal coverage, so that we can totally wipe out the tragedy of families crippled by legal problems, stuck in legal quagmires, often through no fault of their own? Why not by the same method as is proposed for lack of medical coverage?

I can find no authorization in the Constitution for a program of taxpayer-paid legal coverage. Absolutely nothing there authorizes or allows the government to take one citizen’s money to use for another citizen’s legal problems, no matter how heartbreaking they may be. So, we must fall back on insisting on a strict adherence to the Rule of Law.

As James Madison advised us, we must “hear no more talk of trust in man, but bind him down with the chains of the Constitution.” We must bind down all branches of the government with the chains of the Constitution. Our eternal vigilance is the price of liberty, as Madison’s contemporary Thomas Jefferson noted.

Likewise, there is no justification or authorization in the Constitution for Medicare or Medicaid. Both programs are unconstitutional. For the truly needy, we should go back to the system of compassionate care we always followed before, and restore insurance to the role for which it was intended: insuring assets against catastrophic losses.

As for legal problems, just think how many would simply vanish if the government returned to the Rule of Law and exercised only the Enumerated Powers, the sole powers that we the people bestowed upon it?

Tamzin A. Rosenwasser, M.D., is board-certified in internal medicine and dermatology and now practices dermatology. She serves as president of AAPS. Contact: juperbeatrix@aol.com.

Subscribe now!

Journal of American Physicians and Surgeons

Please enter my subscription to the *Journal of American Physicians and Surgeons*.

Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Telephone: _____

E-mail: _____ Degree: _____ Specialty: _____

- I wish to join AAPS.
 M.D., D.O. (\$325)
 Associate (\$95)
 Subscription only:
 Individual (\$75)
 Sponsored (\$75)
 Institution (\$125)

Send a subscription with my compliments to: _____

Check enclosed
 Please charge \$ _____ to my Visa, MasterCard, AmEx # _____ Exp. ____/____/____

Signature: _____ →

Mail to: AAPS, 1601 N. Tucson Blvd. Suite 9, Tucson, AZ 85716
or FAX to 520-325-4230.