

## [7.2.5] Distributive consequences of court rulings on social rights

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What do you think of Landau's argument according to which court interventions in social policy through social rights litigation might actually be detrimental to the promotion of social rights, as it would enshrine the rights of better-off individuals (*i.e.*, those who can afford to litigate to maintain the entitlements they already have) *vis-a-vis* those in most vulnerable position, who have no means to litigate, or have no recognized rights on the basis of which to make claims?

As an illustration of this problem, consider the following situation:

- a middle-class retiree needs to undergo expensive heart surgery but is unable to fund the expensive procedure;
- spending her savings, this person files a claim before national courts based on the right to highest attainable level of health under the ICESCR, or an equivalent constitutional provision; indeed, she argues, the refusal to fund her surgical costs is a form of discrimination based on age;
- the Court gives reason to the claimant, and orders the State to cover the surgical expenses as well as the judicial costs;
- the same funds had been earmarked to finance a vaccination campaign in a poor rural area, but the government is obliged to prioritize the surgery because of the Court order.

Do you think the situation described is distinct from the Indian Supreme Court ruling? Do you think the possibility of such Court cases is good for the promotion of economic, social and cultural rights?

Here is my take on this topic, and I do live in the USA, where you have to pay for your health coverage, although recently they have formed something called Obamacare, which allows low cost health care for the poor as well. My husband comes from a country where health care is guaranteed for all people, whether they have a job or not, and consequently, their salaries for the same high tech position I've always held in the USA would be less in his country, and this is one reason why. In his home country, they feel that guaranteeing that the poor have basic health care is a basic right they must guarantee, just as my country does for food and shelter, but only recently, low-cost health care options.

Do I think any country should prioritize one woman's need for heart surgery over poor people receiving vaccinations? In my own personal opinion, I think if you budget well you can do both. Do I think my country can do this at this time? Given our system does not work this way, and it may never come to any agreement to do so, I have no idea, but if the bi-partisan committees who fight over these things ever came to an agreement to budget guaranteed health care for all, it is a major, major economic decision, and my country's economy (guessing again) may be disrupted if they just spontaneously tried to provide it for all overnight (if they ever agreed on the topic!)

I think recently they have implemented basic needs programs for all, where poor people's infants can be vaccinated for free or low cost, but I don't really know all the facts here. Do I think they should? Of course, but I don't know if anyone will ever agree here on it. I have friends in my technical field where I've always worked, whom I respect a great deal in many ways, who are totally against having the government provide health care for all people, including the poor, because they don't trust the government to do it. So my response was, (given other countries do it), is that given the corruption

problems that exist everywhere in our societies, perhaps appoint some independent bodies to oversee the people who allocate to provide these things to remove any found corruptions. However, I'm just a techie who chats with people, and I don't know if its really possible here given the fighting, and if they ever did agree to it, how long it would take to transition our economy to support it as other countries do.

And here are a few personal stories that allowed me to come to support the way my husband's country guarantees health care for all (if my country ever did transition to this). I worked many, many years, paid for my BS and MS big bucks, and lost my job almost 5 years ago, with 2 young kids, and if I did not have a husband who had a job, at that time, myself and my 2 children would not have had any health or dental coverage. I thought to myself--that's not the way a fair country should treat people, and it became more eye-opening to me. I have been trying to get a job in my high tech field now for almost 5 years, and have not found one, and I have worked harder than any other time in my life to change that--but so far have not--and if I did not have a husband, and some women do not, I would not have been able to provide health coverage for myself and my 2 young kids.

Also, another story that drove the importance of this point home for me, was when my first child was born and traveled to my husband's home country in 2003, he got pneumonia, and although I was working and had health coverage, my husband's home country told him that because he was still a citizen of their country and had not been living and working in the USA for 5 years at the time, that his son, a US Citizen would be paid for by his nationalized health care. It opened my eyes because I thought to myself, how do they budget for these things, when my country cannot? They saved my 6 month old son's life, by admitting him into the hospital, giving him an IV drop of penicillin, stayed 4 nights in the hospital, providing me a bed so I could sleep next to him the entire time, albeit crowded but I did not care, and he survived it. I can't tell you how shocked I was when they explained why there would be "no charge" to my health care plan I had at the time, and additionally very happy because there was a moment there I thought my son was going to die.

Last personal story of why I support the idea (if it could ever be agreed upon to work in my country): When I was 16, I had a 12 inch rod placed in my spine, fused with a re-growable bone from my hip, for scoliosis correction, and my parents health care plan paid for the bulk of this procedure. Would this have been covered in my husband's country, this procedure that saved mine (and my sister's) life, in that our cardio-vascular system / breathing could have been disrupted in later life, killing us early, due to our crooked spines? I have no idea really. But my guess is that in countries that have this guaranteed health care system, they do, but they must budget for things more carefully, and salaries for things that I have always done, high tech employment, will be lower because of it. I do know people from my husband's country that have come to my country for some types of cancer care that they were told were better supported in my country--but also much more expensive, so only the rich of my husband's country could afford to do that, and the same is sometimes true in my country too, that you can only get that level of special care if you can afford it.

And the last bit on this topic, another way I've seen things done here, given many poor people do not have health coverage, or perhaps more do now with the lower cost Obamacare. But when I was 16, and I knew nothing about my country's health care system and how it has a cost, verses other countries that guarantee it by lowering the salaries a bit of their citizens, I had a hospital room mate who was a poor black girl who did not have health coverage and she also needed a liver transplant. After I got out of the hospital, my high school had a fund raiser to help raise money and awareness of her need, got our pictures in the paper for it, to help her cause. Even if I was not paying back all the favors she did for me while immobilized in my bed for a few weeks, seeing spiders crawling on walls from heavy-duty pain killers that were not actually there, and asking her to squash them for me, and with great patience, telling me there was nothing actually there. When I got out, it just made sense even though she was no

close friend of mine, that this was the right thing to do. And I think a lot of these types of "support your fellow man in need" fund raisers go on here.

So this type of things goes on too, but it's not the best solution, is it. The best solutions (to techies especially) is a solution that is calculated on some common sense basis that makes most sense for all. I have no idea if my country will ever transition to guarantee health care for all as some countries do, but if they did, my guess is that smart people would have to make common sense calculations on how to implement it, and it would take a long time, given our economy does not currently run that way, and could disrupt it too much, even if they knew exactly how to do it today.