

PUBLIC HEALTH AND PRIVATE SICKNESS

THE LAW OF GOVERNING BODIES, ADMINISTRATIVE CORPSES AND AILING CITIZENS: ILLUSTRATIONS FROM GERMANY

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I.

The older we get—and, of course, the more we study—we learn a lot about the world we live in. Step by step we understand more about our nature. And we discover its secrets, the way things work. Within this process, one day, we often find that there are mighty powers behind all sorts of events. And some of us even believe in the existence of an almighty creator who has foreseen all of this and who has planned all incidents, all factors, all details working one for each other, forming the wonderful unit of this miraculous earth. And in addition to this, we understand the functions of our own bodies. We are amazed at seeing the perfection of its organ's cooperation and interplay, the intelligence of a central nerve system for example, or the meritorious strength of a liver. At some point most of us feel a great humility, no matter whether we think all of this was made by god or by accident.

In comparison with these impressions it brings us down to earth to take a look at the system of public health care in Germany, because its components and modes of operation perform in a very different way. We see a system that claims to be made perfectly and we see politicians and administrators improving it from day to day. But in the end it is nothing but a very, very expensive bureaucratic chaos that is paid for by innocent and unsuspecting citizens and that delivers far less medical service than could be if it was organized by the people themselves. Let's take a closer look at the system's details to see how destructive deadly socialist ideas have been on the structures of this "public health".

II.

Within the last four decades legislators have written 12 books of social law (Sozialgesetzbuch or SGB) in Germany. The first of these SGB states the chief aim of them all, right in section Nr. 1: the first and foremost task and mission of all books is to bring "social justice" to all citizens (which, by the way, was the same concept found in the preamble of the former GDR's constitution of October 7th 1949).

The fifth of this impressive social dozen is the one that deals with health and with the provision of medical care

for the insured. Here we find the tragic mixture of economics on the one hand and medical treatments on the other that constantly misleads the insured and leads to heavy economic burdens for all.

III.

According to this law every resident of the Federal Republic who signs a contract of employment instantly becomes a compulsory member of the public health insurance system. His employer also takes part in this legal edifice. He is not allowed to pay the whole wage directly to his employee. Instead, he has to deduct 15.5% of the employee's wage and he then has to transfer this sum at the end of each month to the health insurance company that his employee has chosen to be responsible for his health.

At this point, before we go, we should take a closer look at four characteristics of the system. These interim observations are that: (1) We should look at the term "health insurance company". We should (2) make clear what it means to say that this company is "responsible" for the employee's health. We ought to be (3) aware of the system not being genuine insurance. And we have to face the fact (4) that even these approximately 250 public health insurance companies—as of the beginning of 2009—are nothing else than remote-controlled financial units of a new giant administrative masterpiece called "Health Fund".

(1) A health insurance company in Germany is not a "company" in the sense of a free and private corporation. It is nothing else but a government body. It has sovereign powers over its members and consequently the right to issue administrative acts. In case an employer decides not to transfer the monthly contribution of 15.5% he will suffer punishment according to criminal law, even if his employee agreed to this. The punishment laid down by law for this crime, by the way, equals the punishment laid down for the procuring of women by force. (Obviously, we would hardly be the first in history to ask why a system that is said to be as glorious as this needs to take people under its wing by the threat of force). We can see that this system, so to say, is deadly serious about collecting all the contributions of its insured.

(2) Saying that the system is “responsible” for the health of its insured is not just euphemistic wording. Again, this is—at times in the bitter and double sense of its meaning—deadly serious. In the first section of the fifth social law book we read that an insured is “jointly responsible” for his health. This means in an *argumentum e contrario*—this is, regarded from the other side of the mirror—that the insured is no longer responsible for his own body. He is only one out of a group of responsible persons and bodies who care for his own health, body and life.

(3) This brings us to the third interim remark. This public health insurance system is not a health system on a level with calculated, actuarial theory. The risk of getting sick is not set in relation to the amount of one’s insurance premium. Instead, the size of a contribution only depends upon one’s income bracket. This simulates poor people not facing major health risks whereas those insured with higher incomes are fictitious bad risks. One does not have to be a specialist in the arts of actuarial theory to understand that this system provides a peculiar set of stimuli and incentives to its compulsorily insured members.

(4) As I noted, the latest administrative masterpiece of German health policy is a so called “Health Fund”. Imagine all public health insurances collecting in all contributions from all insured—via their employers—and them all being bound by law to pass on all that money to this single, gigantic general health fund. This is no nightmare: it is the law in force in Germany since the 1st January 2009. And it is the reality in my country that this general health fund subsequently pays out these collected sums—according, of course, to certain quota allocations that guarantee social justice coming into being—to each single public insurance company again. (I suppose that many specialized experts will have to travel to an awful lot of meetings throughout the country again and again, to find the right mathematical formula for the real social-justice-cash-flow. And I am rather convinced that they will also have a lot of fun doing this...)

However, a system such as this speaks of “public health”, but it creates—and this is my thesis—nothing else but private sickness. It sets back the individual into the loneliness and isolation of his own body. It falls back into the undeniable fact that physical pain and grief are strictly personal occurrences. The intellectual misconception of a public that could be kept healthy by authoritarian political and administrative arrangements without asking the will of every individual, leads inevitably astray. Why is that so? Because the public simply has no body! It’s as easy as this. You can’t shake hands with the public, you can’t look into the public’s eyes and the public cannot catch a cold. Only human beings can, because only human beings have bodies. So, if you make policy for the health of a subject (named “public”) that has no body, you can’t at the same time make proper policy for those who really do have bodies.

All these public health ideas just got on the wrong intellectual track. And it is not my subject here to deal with the question whether those who personally profit from this system lost their orientation either by accident or design. But the German health system provides an example of the symptoms and functional disturbances of any public health system that is simply based on these sorts of incorrect axioms. Let me prove this by describing the ways that the German system searches for and finds the “adequate” therapy for a sick and suffering individual.

IV.

Since you are not asked whether you want to be insured within this system, it is no wonder that when you become ill you are also not asked what kind of therapy you want to receive. The system has its answers for you. The system cares for you. Remember: you are only “jointly responsible” for yourself. Consequently, you are not the only owner of your body. Your co-owners want to exercise their co-determination rights concerning your body to constitute this fiction of a “public body” that shall be cared for.

The main legal technique to make sure that a patient is not to be asked about what kind of treatment he wishes is, of course, the system of it all being put into public—and not into private or civil—law. None of the members of this system is invited to express his views or opinions on the proceedings. Everyone is simply forced to participate in it by law.

Now, if an insured person is under medical treatment he has, consequently, no right and no chance to agree on a personal contract with his medical doctor concerning the form of the treatment. The doctor on one side is participating in a health insurance plan. He himself is compulsory member of a special chamber of doctors. This chamber of doctors is also constituted as an administrative body under public law with sovereign rights in relation to every single doctor. And the patient on the other side is, as mentioned, only part of the administrative body called “public health insurance”. Neither the patient nor the doctor are asked about what they think to be the right sort of medical treatment in each case. Instead of any private agreement between these two parties, the written law of our fifth social law book and the supplementary implementing regulations (that are invented by the administration to fill the many gaps) determines the course of events inside every doctor’s consulting room. The patient does not get what he wants. He gets what the experts and specialists of his public health insurance—and, of course, the mighty general health fund in the background—find to be “necessary”.

The necessity of a treatment is defined as that being (a) economically efficient, (b) adequate and (c) expedient. These are the three constituent factors that make a good and necessary treatment. Unfortunately, the standards of

these constituent components which might lead to a treatment you wish are defined objectively or—to use another, maybe more precise word—they are “disinterested”. That means that you personally, as a subject, might have been interested and willing to spend more money to get a certain treatment different to the average standards. A treatment, so to say, that is somewhat objectively inadequate. But—sorry!—the system can, of course, not take such extravagances into consideration. It has to keep in mind that all insured parties have to get the medical part of social justice as well. Even if you have paid thousands and thousands of Euros into the system over years this still leads to you having to pay for your own special treatment once you need it.

All of these thoughts and ideas are brought about by sheer, unimaginable bureaucratic force. Between every single medical doctor and every single patient we find a kind of giant administrative vault, a modern dome of public servants doing their indefatigable jobs—and being paid of course from the public purse of the system’s compulsory members.

Once a patient gets sick, it is, as mentioned, not the doctor who has to find and to prescribe the appropriate therapy. It is the employee of the social insurance institution called “health insurance” who selects between the possible treatments. But since this employee never in his life has studied medicine he has to obtain a specialist’s advice to do his job. To make sure he can find that advice our legislators have created another administrative body called the “Medical Service of Health Insurance Institutions”. Inside this highly specialized government subdivision you’ll find medical doctors who have the status of a public official. They decide about your therapy, unfortunately without ever having seen you personally. But they read your medical records very carefully. And they assess your case with the standards that are given by another—even more specialized—government body, called the “Advisory Committee of Common Interests within the Health System”.

In those cases in which not even this Advisory Committee knows what is wrong and what is right, they can ask another administrative body called the “Institute of Quality and Good Efficiency inside the Health System”. This Institute recently founded another Foundation under private law which helps to carry out all the work that has to be done. For example, the fifth social law book allows these institutions—as well as the Ministry of Health itself—to entrust external specialists to give their expert opinions in writing.

If your medical standpoint is not the one of these bureaucrats, you still have the right to file a case in court. This guarantee of access to the courts can even bring you to the constitutional courts. And what they think about all that might be the subject of another lecture, should we have a couple of hours to deal with that.

We all have to pay very dearly for that. But, as our politicians say: isn’t health invaluable?

V.

In the end we find an astonishing result of all these health political and health administrative efforts. When the German health system was created at the end of the 19th century its founders aimed at a certain ideal. They wanted to end the era of poor people being thrown upon acts of clemency, grace and mercy in case of illness. They wanted to “empower” the poor with legal rights upon the health sector.

What has come about now is a system of simply unclear fundamental-principle rights of people against their public health insurance that indeed give “necessary” medical protection. But the contents of these “rights” are indefinite, unascertained and—with regard to the medicine according to the position of liquid assets within the system—completely indeterminable. If you as a patient have not the means to pay for a treatment you really need and all these impressive administrative bodies within the public dome of social justice are not willing to officially approve your therapy, then you have no other course other than to simply beg for treatment! So this again throws people onto depending upon acts of clemency just like it used to be in the 19th century. In other words: we have reached the same point again from which we started 130 years ago!

In effect, the whole language of “social justice” inside the German public health system has become (1) nothing else than a camouflage-term for medical unsteadiness and uncertainty; (2) a self-serving system for those who enrich themselves by pretending to be able to perfectly define absolute adequate treatment-standards; and (3) a welcome method of political ruling in post-religious, modern times.

VI.

Right in the middle of our bodies there is an organ called “spleen”. I think God—or whoever is responsible for us being here—must have had a certain idea when he invented this tool for our lives. Because if you are injured and lose this organ you do not have to die (at least not for that reason). The other organs inside your body take up the duties of that lost spleen. So in the end I can promise you this: We can learn from nature that a public health system is probably nothing else but a spleen. If we clear it away from the earth’s surface all of human society can live on without any damage, every single human being will be healthier than they are today. And health will be far cheaper and in consequence affordable for everyone.