



A TRIBUTE TO ELEANOR DEARMAN KINNEY

Indiana Health Law Review

Volume XVII

2020

Number 1

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INTRODUCTION

ROBERT KATZ*

This issue of the *Indiana Health Law Review* celebrates the scholarly achievements of Eleanor DeArman Kinney, who passed away on November 16, 2018, at the age of 71, her life cut short by illness. It consists of articles written by scholars who engage Professor Kinney's ideas and concerns.

In 1984 Professor Kinney joined the faculty of the Indiana University Robert H. McKinney School of Law.¹ She came ready to do great things, having earned her Bachelor of Arts and Juris Doctorate from Duke University, a Master of Arts from the University of Chicago, and a Master of Public Health from the University of North Carolina. She came armed with practical wisdom she gleaned from working at the U.S. Department of Health and Human Services, the American Hospital Association, Duke University Medical Center, and in private practice.

Professor Kinney, who retired in 2011, had a lasting impact on IU McKinney. She served as founding Executive Director of its internationally recognized William S. and Christine S. Hall Center for Law and Health, which was established in 1987.² Professor Kinney “helped educate and mentor two generations of Indiana healthcare lawyers,” writes William H. Thompson, a former student and colleague, who expresses deep gratitude for her guidance and vision. Professor Nicolas Terry, Professor Kinney's successor as the Hall Center's Executive Director, surveys her many contributions to the School of Law and to health law scholarship in “Standing on the Shoulders of a Giant.”

Professor Kinney authored or co-authored more than seventy-five journal articles during her thirty-five years in the academy and into her remarkably productive retirement—or “dotage” as she mischievously called it. Two of these articles appeared in this publication, whose establishment in 2003 she inspired and facilitated. She also published seven articles with the *Indiana Law Review*. Susan David deMaine's “Works of Eleanor D. Kinney” carefully catalogs her published works and encapsulates key themes.

Professor Kinney was a leading exponent of the idea of health care as a

* Professor of Law, Indiana University Robert H. McKinney School of Law. A.B., 1987, Harvard University; J.D., 1992, The University of Chicago School of Law.

1. Formerly known as the Indiana University School of Law - Indianapolis.
2. Formerly known as the Center for Law and Health.

human right. Her contributions to this field are lovingly detailed in these pages by Benjamin Mason Meier and Lance Gable in “Advancing the Human Right to Health: Eleanor Kinney’s Seminal Contributions to the Development and Implementation of Human Rights for Public Health.” “In reflecting on her legacy,” write Meier and Gable:

we recognize her enduring contributions to the intersection of health law and human rights, which were not only ahead of her time in understanding the importance of international law, but also continue to have relevance in these uncertain times for the realization of health and human rights in the United States.

Professor R. George Wright, a colleague of Professor Kinney, writes that “[r]ather like a gemologist, Professor Kinney examined the facets of th[e human] right [to health care] with discerning attention.” He then proceeds to mine this rich vein. Professor Kinney favored “an updated natural-law based approach” to justify claims of a human right to health care. This approach is audacious, he explains, because “[c]ontemporary culture tends to view natural law theories of any political valence as unpersuasive, incredible, or realistically unavailable.” Even so, developing the foundations of such an approach “if possible, is a worthy task.” Hope requires audacity, and Eleanor Kinney had both.

One can espouse a human right to health care without completely theorizing its basis. Yet even a rights skeptic might assert such a right in order to mobilize political support for proposals to expand access to health care. In “Seize the Moment: The Opportunity to Realize the Human Right to Healthcare in the United States,” Professor Fran Quigley, another colleague of Professor Kinney’s, declares that enacting “Medicare for All” would “fulfill Eleanor Kinney’s lifelong quest to see healthcare become a realized human right” in the U.S. There is something thrilling about seeking the realization of a *human* right as compared to a right not characterized as such, much less of an interest or preference.

Professor Quigley believes that “we may finally be on the cusp of change” for health care in the United States. European countries may be moving in the opposite direction, reports Elisavet Athanasia Alexiadou, a lawyer who researches health and human rights law, in “Health Care Reforms and the Challenge of Inequality from a Human Rights Lens: Lessons from Europe.” If true, this movement is ironic because, as Alexiadou states, all European Union countries “are parties to at least one legally binding human rights treaty which guarantees a right to health (care) for every individual.” Even so, “Europe seems to be moving away from the language of human rights commitments, and particularly of [a] right to health commitment, to one of technical inputs and efficiency gains.” This movement is driven by the imperatives of government austerity and socioeconomic inequality. It may also reflect disenchantment with the elusive task of tailoring an abstract right to the demands of a given situation. Are Europeans also obliged to enact Medicare for all? “[I]t must be conceded,” concedes Alexiadou, “that human rights standards do not provide easy solutions on health care reform choices.”

Some of Professor Kinney’s scholarship helped pave the way for improvements in health care quality. In [title], longtime colleague Professor

Barry R. Furrow explains how an influential article co-authored by Professor Kinney offered a potential future for “Medicare as a quality promoter through the use of Medicare’s Quality Improvement Organizations (“QIOs”).” Her research on community-based long-term care provide models for improving such care, as Rachel Zuraw and Tara Sklar explain in “Digital Health Privacy and Age: Quality and Safety Improvement in Long-Term-Care.” Professor Kinney was also an early champion of empirical health law scholarship, as Professor Ross Silverman recounts in “A Cross-disciplinary Giant at the Crossroads of America.”

That the present contributors are moved to “engage, deeply, generously, and thoughtfully”³ with Professor Kinney’s ideas is yet another testament to her achievement. Her conviction that a human rights approach to health care could help alleviate human suffering was of a piece with her faith in a beneficent ultimate reality. May her memory be a blessing.

3. This formulation comes from Ashley J. Bohrer, *Marxism and Intersectionality: Race, Gender, Class and Sexuality* 22 (2019).