

Healthcare, Education, and the Social Safety Net: An American Lawyer's Perspective From Trekking in Scotland

This past spring, my college roommate and I went on a week-long trek on the West Highland Way in Scotland. She is of (distant) Scottish heritage, and hiking the WHW was a lifelong dream for her. I didn't know much about Scotland beyond kilts, bagpipes, shortbread, and the Loch Ness monster, but was game for an adventure. Armed with trekking poles, rain gear, and boxes of Covid tests, and after weeks of checking and re-checking Covid numbers and travel protocols, we made it to Glasgow and then, a short train ride later, to Milngavie (pronounced "mull-guy") and the start of our hike.

We spent a total of 10 days in Scotland, and it was a quick, but surprisingly deep, immersion into Scottish culture, society and politics. From the start, I was struck by how well educated everyone is – from the cab drivers and meter maids to the tour guides, shopkeepers and innkeepers. I was also struck by how many people on our trek were retired, and how hale and physically fit they were – which seems very different from what I've seen of retirement in the US, where older people often have chronic illnesses that are not always well managed and often can't afford to retire until much later.

Is it just that wayfarers are a self-selecting group of healthy, educated types – people whose idea of a great vacation is hiking all day, soaking in nature and history, and chatting with strangers on the trail? I'm sure there's some of that. But what we learned from virtually every interaction, on the streets of major cities and small towns, in shops and cabs and in town squares, and from those we met on the trail and off, is that people in Scotland tend to feel taken care of by the social safety net afforded by their government and simply don't worry about two of the biggest financial burdens that people in the United States spend inordinate amounts of time, energy, and, sometimes, their life savings on: higher education and healthcare.¹

College Education in Scotland

Higher education is free in Scotland. For Scottish students who have lived in the country for three years before applying to college or university, college is paid for by the government.²

¹ Notably, the number one reason people file for bankruptcy in the United States is medical issues and associated costs; and student loan debt follows close behind. *See e.g.* Lorie Konish, "This is the real reason most Americans file for bankruptcy," *cnbc.com*, Feb. 11, 2019, <https://www.cnbc.com/2019/02/11/this-is-the-real-reason-most-americans-file-for-bankruptcy.html>; *see also* Hillary Hoffower, "Staggering medical bills are the biggest driver of personal bankruptcies in the US. Here's what you need to know if you're thinking about filing for bankruptcy," *businessinsider.com*, Jun. 25, 2019, <https://www.businessinsider.com/causes-personal-bankruptcy-medical-bills-mortgages-student-loan-debt-2019-6> (66.5% of all personal bankruptcies are related to medical issues, including medical bills and time away from work, and 25.4% of bankruptcies are due to student loans).

² *See* Chris Thornton, "Is University Free in Scotland?", *Live Breathe Scotland*, May 18, 2022, <https://www.livebreathescotland.com/is-university-free-in-scotland/>; "Tuition Fees in Scotland: Everything You Need to Know," *study.eu*, March 2020, <https://www.study.eu/article/tuition-fees-in-scotland>. Students from EU and EEA countries and Switzerland who meet certain residency and other requirements may also be eligible to attend college or university in Scotland tuition-free. *See* <https://www.scotland.org/study/how-to-apply/funding-and-fees>.

This includes training for doctors, scientists, and engineers.³ The benefits⁴ of free higher education include:

- Providing all citizens, regardless of background, with an equal opportunity for further education which, in turn, leads to better job opportunities;
- Alleviating financial concerns, which means students can concentrate better on their studies;
- Providing Scottish children with hope for their futures, knowing that they will not be limited by money in pursuing their educational and professional goals; and
- A higher employment rate which, in turn, reduces benefits claims.

Of course, Scotland is a small country: it's easier to provide free college education in a country of five million people⁵ than, for instance, in England (56 million)⁶ or the US (332 million).⁷

And, notably, some US states, including New York, have implemented free tuition programs. In 2017, New York launched the Excelsior Scholarship, a first-in-the-nation program covering four years of college tuition not dependent on academic performance for students with family incomes up to \$125,000. The program applies to all City University of New York (CUNY) and State University of New York (SUNY) schools.⁸ Tennessee also has a free tuition program for community college or technical school, modeled on a county program that has seen measurable success.⁹ And even while the Biden Administration's plan to provide free tuition for community

³ See Thornton, *supra*.

⁴ See *id*.

⁵ See Thornton, *supra*.

⁶ See <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates>.

⁷ See <https://www.census.gov/library/stories/2021/12/happy-new-year-2022.html#:~:text=As%20our%20nation%20prepares%20to,since%20New%20Year's%20Day%202021>.

⁸ See Jessica Dickler, "5 years ago, New York made 4 years of college free for residents. Here's how it's going," *cnbc.com*, May 27, 2022, <https://www.cnbc.com/2022/05/27/new-york-made-4-years-of-college-free-heres-how-its-going.html>. However, as of May 2022, fewer than 73,000 students have received the scholarship and, among first year CUNY undergraduates, only 25% of eligible students participate in the Excelsior program. Judith Scott-Clayton, a professor of economics and education at Columbia University's Teachers College, surmised that the Excelsior Scholarship application process, "the hoops and hurdles and the fine print," may be a reason more students are not applying for the program.

⁹ See Jenny Gross, "Does Free College Work?" *New York Times*, July 10, 2021, <https://www.nytimes.com/2021/07/10/business/dealbook/does-free-college-work.html>. Data from the Knoxville County program shows that participants who graduated high school in the 2009-11 time period earned 13% more than their counterparts who did not participate in the program, and that college enrollment among Knoxville County high school graduates increased 3% in that same time period. Since Tennessee's statewide program launched in 2014, the state has seen a significant uptick in college enrollment within a year of high school graduation, as well as an increase in degrees and work force certificates. The success of Tennessee's program has been attributed to several factors, including that the program is simple. According to Celeste Carruthers, a professor at Haslam College of Business, University of Tennessee, "The crystal-clear message that college is free if you follow these steps and go to these places cuts through a lot of the clutter and opaqueness." Tennessee's program also includes a mentorship component, which is especially helpful for first-generation college students as well as students managing other stressors like homelessness and hunger.

college has stalled at the federal level,¹⁰ several other states and municipalities are making higher education a priority and expanding tuition assistance.¹¹

Healthcare in Scotland

We also learned from our fellow travelers that the government provides free healthcare to people living in Scotland.¹² The National Health Service (NHS) in Scotland is mainly funded by taxation and extends free healthcare to all people employed or self-employed in Scotland (not limited to Scottish citizens),¹³ along with their spouses and immediate families. The full healthcare subsidy also includes accident and emergency treatment, and extends to full-time students (part-time students may also be eligible).¹⁴ Young people (under age 26) and people on income support

¹⁰ Note: the Biden Administration has signaled that it is considering using executive action to implement student loan forgiveness, possibly along the lines of \$10,000 per borrower earning \$125,000 or less. See Adam S. Minsky, “Biden Administration is Ready to Implement Mass Student loan Forgiveness, As Decision Could Come Any Day,” *Forbes*, Aug. 2, 2022, <https://www.forbes.com/sites/adamminsky/2022/08/02/biden-administration-is-ready-to-implement-mass-student-loan-forgiveness-as-decision-could-come-any-day/?sh=3fd7b8a21335>.

¹¹ See Danielle Douglass-Gabriel, “Tuition-free college movement gains momentum, despite Biden’s stalled plan,” *washingtonpost.com*, Mar. 5, 2022, <https://www.washingtonpost.com/education/2022/03/05/tuition-free-college-states/>.

The issue is, of course, more complicated than meets the eye: lawmakers have questioned whether free community college for all would be enough to effect meaningful change. See Gross, *supra* (proponents of free community college argue that it would increase college enrollment, particularly among low-income and minority students, as well as help the economy by injecting more college-educated people into the workforce; however, “most Americans have doubts about the effectiveness of community colleges, with only 12 percent believing community college degrees prepare people ‘very well’ for the work force, according to a 2019 Pew Research Center survey”; furthermore, Republican politicians who opposed Biden’s plan argued, *inter alia*, that community colleges consistently underperform, with only one-third of students making it through to graduation).

Also worth noting: England used to provide free tuition at public universities but has moved away from that model, after finding that the beneficiaries of the system were mostly middle and upper class families, and that the progressive rise in public college enrollment meant fewer resources per student, declining quality of education, and, ultimately, the need to impose caps on the number of students who could enroll. See Richard Murphy, Judith Scott Clayton, and Gill Wyness, “The end of free college in England,” *CentrePiece*, Summer 2017, <https://cep.lse.ac.uk/pubs/download/cp503.pdf>. In 1998, England introduced tuition fees for public universities, along with an income-contingent loan program that provided students with access to more funds during enrollment that they could repay as a fraction of their income after they graduated. See *id.* Charging tuition meant more resources per student, a decrease in caps on enrollment, a fairer system that brings in money from those most able to pay, and an increase in the government’s ability to provide assistance to those most in need, including assistance with living expenses. See *id.*

Lessons from the English model include: focusing less on net price and more on net liquidity (i.e., costs faced by students, including both tuition and non-tuition expenses, and resources available to them at the point of entry); an income-contingent loan repayment system; and that focusing solely on the concept of free tuition for all may mean less money for the neediest students. See *id.*

¹² See <https://www.scotland.org/live-in-scotland/healthcare#:~:text=Comprehensive%20free%20healthcare%20is%20available,is%20in%20very%20good%20hands>.

¹³ See <https://www.nhsinform.scot/media/1115/health-care-for-people-coming-to-scotland-to-work-v6-2016-191.pdf>.

¹⁴ See <https://www.scotland.org/live-in-scotland/healthcare#:~:text=Comprehensive%20free%20healthcare%20is%20available,is%20in%20very%20good%>

or who have low incomes are also eligible for subsidized healthcare, including dental treatment, vouchers for glasses or contact lenses, and reimbursement for hospital travel costs.¹⁵

Furthermore, prescription drugs are free in Scotland.¹⁶ Scotland also provides free care for the elderly: people over 65 are eligible for government-subsidized care, including assistance with personal care (hygiene, meals, etc.) and mobility.¹⁷

As a result, people in Scotland have ready access to preventative care and treatment, hospital and surgical care, dental care, and care for the elderly, and people don't worry that an unexpected medical expense could push them into poverty or that they might have to ration insulin because they can't afford it or don't have insurance to pay for it.¹⁸ They also don't have to worry about paying for (or saddling their kids with) elder care, should they need it.

This is not to say socialized medicine is the only—or necessarily the best—way to go. Different countries run their healthcare systems on different frameworks, with varying results.¹⁹ However, there is little doubt that the current healthcare infrastructure in the US²⁰ is not serving

20hands; see also <https://www.nhsinform.scot/care-support-and-rights/health-rights/access/healthcare-for-overseas-visitors#overseas-students>.

¹⁵ See <https://www.gov.scot/publications/quick-guide-help-health-costs-6/>.

¹⁶ See <https://www.nhsinform.scot/care-support-and-rights/nhs-services/pharmacy/prescription-charges-and-exemptions>.

¹⁷ Thornton, *supra*; see also <https://www.gov.scot/policies/social-care/social-care-support/>.

¹⁸ See Chris Thornton, “Why Do Scotland Get Free Prescriptions?”, Jan. 30, 2022, <https://www.livebreathescotland.com/why-do-scotland-get-free-prescriptions/>; see also <https://www.npr.org/sections/health-shots/2018/09/01/641615877/insulins-high-cost-leads-to-lethal-rationing>.

¹⁹ While the US consistently ranks lower in life expectancy analyses compared with other similar countries (see e.g., “Life Expectancy and Healthy Life Expectancy Data by Country,” World Health Organization, <https://apps.who.int/gho/data/node.main.688?lang=en>; “US Life Expectancy Drops for Second Year in a Row,” US News & World Report, April 8, 2022, <https://www.usnews.com/news/health-news/articles/2022-04-08/u-s-life-expectancy-drops-for-2nd-year-in-a-row>; “A Long Life Does Not Always Mean a Healthy Life in Old Age,” U.S. Census Bureau, May 26, 2021, <https://www.usnews.com/news/health-news/articles/2022-04-08/u-s-life-expectancy-drops-for-2nd-year-in-a-row>), it is worth noting that life expectancies and health levels vary across the UK, with those living in Scotland, northern England, and South Wales tending to have lower than average healthy life expectancies (i.e., the number of years a person can expect to live in full health), and those living in the south of England tending to have higher than average healthy life expectancies (see “Map of healthy life expectancy at birth,” The Health Foundation, Jan. 6, 2022, <https://www.health.org.uk/evidence-hub/health-inequalities/map-of-healthy-life-expectancy-at-birth>).

Moreover, Scotland's national health system recently released data showing that healthy life expectancies have decreased over the last several years: the average age for men living in good health is 60.9 years and for women is 61.8 years. See “Scot spending more lifetime in poor health,” National Records of Scotland, Feb. 3, 2022, <https://www.nrscotland.gov.uk/news/2022/scots-spending-more-lifetime-in-poor-health>. (But note: overall life expectancy in Scotland (78.9 years) appears still to be higher than in the US (76.6). See <https://populationdata.org.uk/uk-life-expectancy/>; <https://www.usnews.com/news/health-news/articles/2022-04-08/u-s-life-expectancy-drops-for-2nd-year-in-a-row>.)

²⁰ The disparities in healthcare access and outcomes are not lost on US leadership and lawmakers. In 2010, under the Obama Administration, Congress passed the Patient Protection and Affordable Care Act (also known as the Affordable Care Act (ACA) or “Obamacare”). The law improved access to health insurance and healthcare to lower income individuals by, *inter alia*, expanding the Medicaid program to cover all adults with incomes less than 138% of the federal poverty level (FPL); making health insurance affordable to more people by providing subsidies for

us as well as it could: in fact, among similar countries, the US consistently ranks last in health outcomes even while we spend the most.²¹

Takeaways

In the immortal words of Henry David Thoreau, “I went to the woods because I wished to live deliberately, to front only the essential facts of life, and see if I could not learn what it had to teach, and not, when I came to die, discover that I had not lived.” Our week on the trail perhaps wasn’t quite that epic, but it did make me think about different ways people construct societies, how we choose to live, what we choose to accept, and the values we impose on ourselves and the people around us.

America is the land of the free, the home of the brave. We champion ideals like fairness, equality, individual rights and freedoms, and a government of the people, by the people, and for the people. And we tend to think we have the best system of government and the highest quality of life of any people anywhere in the world. But can we do better?

What does it mean to live in a modern industrialized country where the quality and availability of healthcare depends on one’s employment, and where high tuition rates make it difficult or impossible for many people to obtain higher education? What does it mean to be one

households with incomes below 400% of the FPL; and requiring large employers to provide health insurance to their employees. See “About the Affordable Care Act,” <https://www.hhs.gov/healthcare/about-the-aca/index.html>; “Patient Protection and Affordable Care Act of 2010,” Legal Information Institute, Cornell Law School, https://www.law.cornell.edu/wex/patient_protection_and_affordable_care_act_of_2010.

²¹ See Olga Khazan, “What’s Actually Wrong With the U.S. Health System,” The Atlantic, July 14, 2017, <https://www.theatlantic.com/health/archive/2017/07/us-worst-health-care-commonwealth-2017-report/533634/> (in a report released by the Commonwealth Fund, the U.S. medical system “performed the worst among 11 similar countries, all while spending more. The United States fared especially badly on measures of affordability, access, health outcomes, and equality between the rich and poor. The United Kingdom ranked first, and the other countries in the comparison were Australia, Switzerland, Sweden, the Netherlands, New Zealand, Norway, Germany, Canada, and France. America does perform well, comparatively, when it comes to doctor-patient relationships, end-of-life care, and survival rates after major issues like breast cancer or strokes. However, the United States does less well on measures of population health: It had high rates of infant mortality and a low life expectancy at 60 years. It also has the highest rate of ‘mortality amenable to health care’—deaths that doctors and hospitals can prevent—and has experienced the smallest reduction in that measure in the past decade”).

Note: Some help may be on the way in the form of a new federal bill that was just passed by the U.S. Senate and is poised for passage in the House later this week. The Inflation Reduction Act of 2022 has been described as an “historic climate bill” that will “deliver the largest climate investment in U.S. history.” See Maxine Joselow, “The Senate finally passed a historic climate bill. Now what?”, [washingtonpost.com](https://www.washingtonpost.com/politics/2022/08/08/senate-finally-passed-historic-climate-bill-now-what/), Aug. 8, 2022, <https://www.washingtonpost.com/politics/2022/08/08/senate-finally-passed-historic-climate-bill-now-what/>. It also includes healthcare provisions such as (1) allowing Medicare to negotiate with drug makers over prices for certain prescription drugs; (2) capping out-of-pocket costs for prescription drugs for seniors on Medicare at \$2,000 per year starting in 2025; (3) capping the price of insulin for Medicare patients at \$35 per month; and (4) extending subsidies that were part of last year’s pandemic aid law and that lowered premiums for many people who rely on the marketplace for health insurance provided by the Affordable Care Act (subsidies were set to expire at the end of this year, but will be extended for another three years). See Emily Cochrane and Lisa Friedman, “What’s in the Climate, Tax, and Health Care Package,” [nytimes.com](https://www.nytimes.com/2022/08/07/us/politics/climate-tax-health-care-bill.html), Aug. 7, 2022, <https://www.nytimes.com/2022/08/07/us/politics/climate-tax-health-care-bill.html>; Deepa Shivaram, “Democrats passed a major climate, health and tax bill. Here’s what’s in it,” [NPR.org](https://www.npr.org/2022/08/07/1116190180/democrats-are-set-to-pass-a-major-climate-health-and-tax-bill-heres-whats-in-it), Aug. 7, 2022, <https://www.npr.org/2022/08/07/1116190180/democrats-are-set-to-pass-a-major-climate-health-and-tax-bill-heres-whats-in-it>.

of the wealthiest nations in the world but have so many people who are less healthy and less educated than people in comparably wealthy countries because we have not managed to prioritize access to these resources? What does it mean to live in a nation where healthcare and higher education are not rights available to all? What are the long-term costs, on individuals and society, of the short-term savings of failing to invest adequately in our social safety net?

And what can we, as lawyers, do? At the legislative level, perhaps we can urge local, state, and federal legislative leaders to write more health and education protections into our laws. At the judicial level, perhaps we can persuade judges to recognize access to healthcare and education as constitutional rights. At the executive branch level, perhaps we can continue urging our nation's leaders to prioritize universal access to healthcare and education. And on the international level, perhaps we can support efforts to recognize access to healthcare and education as basic human rights. Whether at a municipal, state, federal, or international level, there is work we can do and lessons we can learn from around the world about how other societies order their priorities and create legal frameworks to support them.

I left the trail with more questions than answers; but also with ideas, insights, and hope for ways to keep striving – and striding – forward.

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