

## Week 11: Justice in Health Care

I want to talk about justice in health care this week—and that is a very big subject for one week. And a vague one, as well. So I've been puzzling about how to approach it.

I spoke at the beginning of the term about the three levels on which the subjects we discuss here have implications-- the *micro* level, of individual cases and decisions—ethics at the bedside, clinical ethics; the *macro* level, of society as a whole, and most often, my society, our society—and in between, the *meso*- level: the institutions of our society, and its organizations that mediate between individuals and that larger society.

And justice means something different depending on what level you approach it.

I Let me talk first about the *micro*-level. I want to live in a just society. That means , at least, that I as a member of that society will be treated fairly – justly – and that others will be treated fairly, justly, as well—

by the laws of that society (and we all occasionally have trouble with that one)  
but by the distributions of that society as well,  
and its institutions on the meso level.

Take this grossly as the things which my society should provide to me, as the conditions of our social contract: education; safety (internal and external); work—an opportunity to contribute to my society and be fairly compensated for it;

and access, opportunity, for whatever goods are on offer—  
which includes, especially for our purposes in this class, health and well-being.

What does justice for me, as an individual, include, mean?

Even on this microlevel, what justice means is pretty varied.

Consider a **formal** principle of justice: *treat equals equally*.

But what are the characteristics in which individuals should be equal, in order to deserve or merit equal treatment??

Some candidates for **material** principles of justice:

to each person an equal share  
to each according to need  
to each according to effort/contribution  
to each according to merit/desert  
to each according to free market exchange....

Each of these candidates represents a *prima facie* obligation for distribution of social goods. Different principles apply to different areas, different kinds of goods.

*[The best source I know for a discussion of the importance of different distributive principles in different contexts is Michael Walzer's Spheres of Justice]*

Example: Suppose you are the admission person in charge of one of the organizations that represents my society's means of providing healthcare to individuals: a residential

assisted living home. An opening has become available, and there are five candidates for it:

A demented man with a degenerative disease with no family or other support

A well known local politician whose wife just died

The wife of a wealthy donor

The person who has been on the waiting list longest

The person who would fit in best with current residents

There might well be material principles of justice that would speak for each of the candidates. (Which one would you pick? On what basis?)

Or: remember our discussion last week about organ donation. The criteria for listing and organ recipient involve medical criteria, by which they are judged according to need, among other things—length in the ICU; the seriousness of their illness, as well as the likelihood of the organ providing benefit for a period of time...

*[In this class you are likely to be told that we are pluralists with respect to material principles, and you are required to balance them in light of the context of the case you are considering.]*

II: Let me talk a bit now about the macro level. Health is one of the things for which my society is to some extent responsible. We share that responsibility with the society, of course; I'm responsible for taking care of myself, avoiding dangerous or life-threatening situations—but one of the Institutions of the society is healthcare. My taxes, my investment in bonds, support the building of hospitals, the education of physicians and nurses.

But health is not the society's only obligation: education, security, infrastructure are also social responsibilities, and the resources of the society need to be distributed among those obligations. How should society decide how to allocate its resources?

Some of our readings for today talk about that question.

We have two readings for this week by *Norman Daniels*: a bioethicist /philosopher who applies Rawlsean theory to the particular area of health care. Justice requires fair equality of opportunity. Disease and disability restrict our ability to meet our needs. So: healthcare needs are whatever is necessary to achieve, restore or maintain adequate levels of functioning. [=fair opportunity] – as measured against human normal.

Let me digress a bit and remind you of the readings for the first week of the class. In their introduction, SAL talk about different *theories* of justice, which try to reconcile and unify our competing intuitions, our various material principles of justice, making recommendations about which ones should be considered most important.

**Utilitarian** theories: our social policies should maximize the good of the largest number of our fellow citizens. Actions (and policies) are justified by the consequences they promote in the society.

**Libertarian** theories of justice recommend the unhindered working of fair procedures; they emphasize choice and liberty; choice determines our contractual

arrangements, and contract determines our entitlements. The important procedural rules govern acquisition, transfer and rectification of property and other contracts.

*In our readings for this week, consider the article by Englehart, who is described by SAL as taking a libertarian position on the question of the distribution of h/c resources.*

**Egalitarian** theories emphasize equal access. Justice is defined less in terms of desert (what I am owed by virtue of my contracts) and more in terms of fairness. (cf. *John Rawls*' article "Justice as Fairness", an early work which is a lot more accessible than his hefty book, *Theory of Justice*) Some basic equalities take precedence over kinds of difference. All vital economic goods and services should be distributed equally, unless an unequal distribution works to the advantage of everyone.

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A principle of fair distribution: nobody should be granted social benefits on the basis of undeserved advantaging properties (or deprived of them on the basis of undeserved disadvantaging properties)—by which we mean those distributed by the natural and social lotteries: IQ, race, gender, ethnicity...

Macro allocation: what resources should be available for health care; and how should they be distributed.

a—should health resources go only to those who can pay for them?

b—should we concentrate more on some categories or kinds of disease?

eg: preventative medicine, like prenatal care?

Painful but common diseases, like rheumatism?

c—should we concentrate on some treatments over others?—eg angioplasty

v. open heart surgery? (who profits from expensive treatments, and who pays?)

We need open and fair procedures for making those decisions.