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# THE PROBLEMS OF SOCIAL JUSTICE IN HEALTH CARE

Bachelor's Thesis in Philosophy

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2021

I hereby confirm that I have written the Bachelor's Thesis myself, independently. All of the other authors' texts, main viewpoints, and data from other sources have been duly referred to.

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## INTRODUCTION

In this thesis, I am concerned with the topics of justice and health care – primarily with the problems of social justice in health care and the distributive aspects of it. In order to start figuring this one out, one would first have to answer some key questions, e.g., how are justice and health care interrelated, why justice matters in health care in the first place, and how could justice help to achieve the ends of health care. Justice is one of the four main pillars of medical ethics, among others – i.e., autonomy, non-maleficence, and beneficence. The concept of justice is also central in political philosophy. The latter seeks to establish the right balance between freedom and equality in a political society. It also aims to develop a framework of the principles by which the fair distribution of various burdens and benefits among individuals and groups within that society should occur. Health care also counts as a good that requires a principle or principles to guide the just allocation of it within society. At the same time, one would also have to take into account the limited resources available. One of the primary aims of the health care system is to save lives, keep people in good health, and to help them get back on track as soon as possible – that is if they have been unfortunate enough to need some kind of medical intervention because of their sudden ill health or some accident. Of course, the reasons that may require critical medical intervention are not enough to adequately describe the full spectrum of health-related needs and preferences and the corresponding services that are out there. For example, there also exists preventive care, palliative care, and holistic care. Some medical care procedures do not require any justification based on medical necessity at all, e.g., plastic surgeries, that are often required because of the aesthetic preferences individuals have. Hence, some principles or theories of justice would undoubtedly be necessary to guide the distribution of health care services, which would also take into account the varying health-related needs and preferences people may have, the overall requirements justice makes, and the limited resources available.

Before furthering any claims about which theory or principle would satisfy the different requirements of the health care system, it is also necessary to ask whether there exist any moral justifications why health care should be considered a right. It is widely held that health can be

considered a fundamental right, but at the same time, health care cannot. Still, more and more countries are applying a system that grants equal access to most healthcare services based on citizenship alone, also known as universal health coverage. At the same time, some do not. This implies that some political, cultural or other community-centered values may also play a role in determining the rules by which health care distribution should take place within a community.

I believe that there are different levels of health people can achieve and that there is so much individuals, as rational agents, can do themselves to care for their well-being and health. Moreover, governments can also take many positive steps to improve population health in general and thus prevent and postpone the need for any medical interventions. Also, I believe that health care services should be equally accessible to all without anyone having to suffer financial hardship because of some medical condition – yet this approach may not be enough to solve the problems of social justice in health care entirely. Therefore my central claim is that none of the theories and principles, which I will cover in this thesis, can cope with the various health care system requirements and needs alone, but these would have to be applied on different levels and in different areas of health care system simultaneously, to achieve the best possible levels of health for everyone. However, some theories and principles will do better in terms of health care than others. Additionally, once we observe some of the causes of ill health, it is clear that these may be due to the errors of the proper policy choices instead.

My thesis consists of three main parts. In the first part of my thesis, I will explain the problem of justice in health care in general and introduce the subject by presenting some relevant distinctions and critical terms related to it. As it will be possible to see, there even exists a specific disagreement on how to properly define the relevant terms, such as health and disease, and consequently draw the line between ill health and good health. This may also have a significant impact on policy choices governments make and consequently affect the actual health outcomes of a population over the course of the lifetime. Then, in the second part of my thesis, I will describe the various theories and relevant principles of distributive justice. In the third and final part of my thesis, I will describe and evaluate how each of these theories may help achieve the ends of health care and meet the requirements of justice, and also present some relevant objections to each. Finally, I will give some practical examples of how the root causes of the problems related to health and the just distribution of health care may be linked to other factors instead, that can also greatly influence people's lives, e.g., the social determinants of health.

I believe that my thesis offers a good outline of the various problems and aspects of social justice in health care, and this contribution can be used further to explore this particular topic from a philosophical perspective. I have covered this topic by referring to the relevant authors' viewpoints, ideas, and texts, which are also useful when going deeper into this specific area of interest. Moreover, as the world's population and the cumulative needs that people have are growing rapidly, also in terms of health care – and so do the socioeconomic inequalities, very close attention should be paid to the various problems relating to social justice.

# 1. Where Lies the Problem of Justice in Health Care?

## 1.1 The Concept of Justice

Justice is a broad concept and has no straightforward explanation to define it. Philosophers from Ancient Greece to the present day have given this concept substance, and their work has helped to lay the foundations for creating more just and equal societies in which we live today. A truly just society is indeed an essential ideal, and a highly developed sense of justice can be considered one of the cornerstones of a great civilization. According to David Miller, the idea of justice is central in ethics, political, and legal philosophy<sup>1</sup>, and we often contemplate and rationalize in terms of justice – what would be just in a specific situation, how would I act rightfully, how much should I get, what would be the consequences of my actions and how should society retaliate its wrongdoers, and so on. These are only some of the questions that might arise in our day-to-day lives without us even acknowledging that this idea is deeply rooted in our minds.

Of course, philosophers do not always agree on the concept. It can be even more difficult for a random small group of people to accept a shared univocal understanding of what justice is and how to solve some problem so that everyone would be equally happy and satisfied with the result. Everyone might have their sense and understanding of a just outcome – more so if some justice-related issue directly bears on a particular individual, or some harm needs to be corrected. Everyone wants the best possible outcome for oneself, and at the same time, everyone has to accept that he or she is also a part of a larger group, a member of a particular society, in which other members have competing needs, wants, and claims themselves. Thus, society as a whole has to take into account everyone's needs, wants, and claims and find the best possible solutions to different problems that would ideally suit everyone. A society that meets everyone's needs, protects everyone's rights, duly acknowledges and appreciates everyone's contributions to society's wellbeing, and guarantees liberties necessary for pursuing personal ends and goals would be

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<sup>1</sup> Miller, D. (2017). Justice. Zalta, E. N. (ed.) *In: The Stanford Encyclopedia of Philosophy*. Retrieved May 1, 2021, from <https://plato.stanford.edu/archives/fall2017/entries/justice/>

content, but this is not always the case. Just as human existence and life can be considered multilayered and multidimensional, so can justice take many forms, and therefore it has to be inspected from different angles – some distinctions have to be made, and various aspects should be taken into account.

### 1.1.1 Justice: Some Distinctions

In this thesis, I will concentrate on the issues of social justice in health care and focus on the distributive aspects of it. When we talk about social justice, the first thing that might come into mind is the inequality between the citizens or groups of some society in terms of liberties, welfare, employment opportunities, access to schools, access to health care, and so forth. It is a rather negative approach since it already puts the first emphasis on inequality. Some authors believe that social justice is difficult to apply even in smaller societies with limited purposes.<sup>2</sup> Yet, it is widely agreed that society is definitely better off when specific rules and principles on how to distribute different goods among its members are applied. However, the very nature of human interaction, preferences, and qualities; political, ethnic, and religious bias, the plurality of values within a community, as well as past historical events, can make it a highly complex task to accomplish; and as J. R. Lucas described: unless someone is willing to sacrifice freedom to achieve a univocal understanding of and commitment to these principles of social justice within the whole community – the nonattainment of the ideal is kind of ineluctable.<sup>3</sup> This, of course, does not mean that the attainment of the ideal should be disregarded in any way.

Nevertheless, according to Oxford Reference, social justice can be defined as "the objective of creating a fair and equal society in which each individual matters, their rights are recognized and protected, and decisions are made in ways that are fair and honest."<sup>4</sup> So, social justice thrives towards fairness and equality regardless of someone's circumstances or social position. It must be noted that even if equality and fairness are the central issues of social justice and also its primary aim, these must not be understood as 'justice is an equivalent of equality' and that every outcome of the same fair procedure brings about the same results for everyone.

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<sup>2</sup> Lucas, J. R. (1972). Justice. *Philosophy* 47, 181: p. 239. Retrieved May 1, 2021, from <https://www.jstor.org/stable/3750151>

<sup>3</sup> *Ibid*, p. 245.

<sup>4</sup> Social Justice (2021). *In*: Oxford Reference. Retrieved May 1, 2021, from <https://www.oxfordreference.com/view/10.1093/oi/authority.20110803100515279>

I will now explain the difference between the many types of justice. It is mainly possible to distinguish between distributive, retributive, and commutative justice. In this thesis, I am concerned with distributive justice, and therefore I will only briefly describe the other two. Retributive justice, in general, is a system by which wrongdoers are punished proportionally for their crimes.<sup>5</sup> It follows three principles: firstly, it holds that those who commit certain kinds of wrongful deeds morally deserve to suffer a proportionate punishment; secondly, that it is intrinsically morally good if offenders get punished by some legitimate punisher; and thirdly, that it is morally impermissible to punish the innocent or to inflict more significant harm on the offender, which is disproportional to the wrongful act.<sup>6</sup> According to Waseem Ahmad and Ashraf Ali, commutative justice deals mainly with the fairness of economic reward and regulates transactions between individuals based on equal values. It determines the portion of goods or services to be rendered in exchange for another sort of goods in a transaction that is usually voluntary and can happen in the form of buying or selling, letting or hiring, and so on.<sup>7</sup> This form of justice can be expressed by the principle that 'fair exchange is no robbery'.<sup>8</sup>

Before I turn to distributive justice, I believe it is also essential to distinguish between formal or procedural justice and substantive justice. In the former sense, justice is not much concerned what the outcome of some law or principle is going to be; thus, it belongs to the domain, which is concerned with the application of the rules or regulations, whereas the latter focuses on the content and substance of justice and deals with the end of some particular law or principle.<sup>9</sup> These forms of justice are usually considered dependent on each other to avoid substantially unjust laws. An example of the incompatibility and the different nature of these forms of justice would be in the face of the rules that were given in Nazi Germany and in the Soviet Union before and also after the Second World War, which, for example, allowed the discrimination and deportation of Jews and other minorities to different concentration and labor camps, and also allowed the state to forcibly dispossess these people from their property rights. Even though of the highly corrupt nature of these laws, these laws were implemented by following the formal rules and procedures

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<sup>5</sup> Carlsmith, K. M.; Darley, J. M. (2008). Psychological Aspects of Retributive Justice. *Advances in Experimental Social Psychology* 40: p. 193. Retrieved May 1, 2021, from

<https://www.sciencedirect.com/science/article/pii/S0065260107000044?via%3Dihub>

<sup>6</sup> Walen, A. (2020). Retributive Justice. Zalta, E. N. (ed.) *In: The Stanford Encyclopedia of Philosophy*. Retrieved May 1, 2021, from <https://plato.stanford.edu/archives/fall2020/entries/justice-retributive/>

<sup>7</sup> Ashraf, A. M.; Waseem, A. S. (2011). Aspects of Justice. *The Indian Journal of Political Science* 72, 1: p. 310. Retrieved May 1, 2021, from <https://www.jstor.org/stable/42761831>

<sup>8</sup> Lucas, J. R. (1972). Justice. *Philosophy* 47, 181: p. 242. Retrieved May 1, 2021, from <https://www.jstor.org/stable/3750151>

<sup>9</sup> Ashraf, A. M.; Waseem, A. S. (2011). Aspects of Justice. *The Indian Journal of Political Science* 72, 1: p. 309. Retrieved May 1, 2021, from <https://www.jstor.org/stable/42761831>

and therefore counted as formally just. Still, the horrible consequences these laws brought about speak for themselves. Hence, any law that meets the conditions and requirements of formal justice does not automatically meet the requirements of substantial justice.

It can be said that the idea of distributive justice has very much in common with the concept of social justice, yet the former is considered broader in scope since it also involves the distribution of power, status, prestige, and certain rights and responsibilities that may come with holding a position in some office.<sup>10</sup> The idea of distributive justice can be traced back to Aristotle, who believed in proportional equality and stated that certain goods should be distributed according to worth and desert and that equals should be treated equally and unequals unequally. If individuals are equal in worth, then it would be just for their shares of relevant goods to be similar, and if individuals are unequal in worth, then it would be just for there to be inequality regarding their shares of some relevant goods, that would also be proportional to the difference in worth. Aristotle also applies this theory to the distribution of political authority and offices.<sup>11</sup> One may now ask, on what basis can someone claim that some people are worth more and therefore should get more of the goods that go around, and others, who are less worthy, less of the goods? Is this morally acceptable on every occasion when some goods are to be distributed that some people should get more and some people should get less? On what grounds should the decision be made that would also be morally permissible? How exactly can one evaluate individuals' proportional equality or inequality, assess someone's worth, and thus figure out how much each is entitled to get? For this purpose, specific criteria and principles would have to be applied within a community that would make the distribution fair, just, and acceptable. This raises the question that what constitutes a fair principle, and can this be applied universally, or only on some occasions and to some aspects of life? Distributive justice is concerned with these issues exactly – simply put, who should get what, and on what basis? It calls for the just distribution of goods, benefits, and burdens and usually assumes a collective input and a distributive agent, such as the government. Some distinct theories of distributive justice include egalitarianism, utilitarianism, and contractarianism, which I will cover in more detail in the second chapter.

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<sup>10</sup> Simm, K. (s.a.). Distributive Justice. In: *Käitumis-, sotsiaal- ja terviseteaduste doktorikooli terminoloogiateeb*. Retrieved May 1, 2021, from [http://www.doktorikool.ut.ee/kstt/term/ET/kategooriad/riigiteadused/politikafilosoofia/distributive\\_justice](http://www.doktorikool.ut.ee/kstt/term/ET/kategooriad/riigiteadused/politikafilosoofia/distributive_justice)

<sup>11</sup> McKerlie, D. (2001). Aristotle's Theory of Justice. *The Southern Journal of Philosophy* 39, 1: p. 119. Retrieved May 1, 2021, from <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.2041-6962.2001.tb01809.x>

## 1.2 The Ambiguity of Health Related Terms

For the purpose of this thesis, I find it also necessary to specify and explain some health-related terms and find adequate definitions to each. These definitions are the subject of much scrutiny even today and can cause disagreements in society, among health personnel and lawmakers – mainly, what counts as a disease or what it means to be healthy? Do illness and disease mean the same thing, or is it possible to tell them apart? Can someone enjoy a healthy life while having a disease? Above all, can the definitions of these terms affect the just distribution of health care, and how?

According to Norman Daniels, a narrow biomedical definition of health would be that it is the absence of disease, and diseases are the 'deviations from the natural functional organization of a typical member of a species.' This definition encounters some problems. Firstly, if humans need a description of the species-typical functional organization, this would also have to include an account of functions that help humans pursue biological goals as social animals, such as acquiring knowledge, linguistic communication, and social cooperation in a changing range of environments. Secondly, mental health issues and different mental illnesses complicate the task even further. It can be said that psychopathology accounts for a whole set of distinct health care needs that could be unmet by this definition.<sup>12</sup> Of course, there has been a shift in recent decades towards increasingly conceptualizing mental disorders as biomedical diseases – manifestations of genetic and neurobiological abnormalities.<sup>13</sup> But, there are some other controversial issues with this kind of definition. For example, the narrowness of the definition makes us think too much about acute care, which can be derived from some economic and social forces that may neglect preventive care and holistic care, and so on. This definition does not take into account various other health-related needs and preferences, e.g., how do these health-related needs, such as terminating an unwanted pregnancy, induced infertility issues, or a particular cosmetic surgery, which would fix some other deviation, not a natural functional one, but still detrimental to one's normal functioning, e.g., cleft lip, fit into this definition of health. This indicates that the definition of health and the conception of health care needs may need a more comprehensive and positive account. The World Health Organization defines health as such – "health is a state of complete physical, mental, and social

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<sup>12</sup> Daniels, N. (1985). *Just Health Care*. Cambridge: Cambridge University Press, p. 28-29.

<sup>13</sup> Appelbaum, P. S.; Lebowitz, M. S. (2019). Biomedical Explanations of Psychopathology and Their Implications for Attitudes and Beliefs About Mental Disorders. *Annual Review of Clinical Psychology* 15: p. 1. Retrieved May 1, 2021, from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6506347/pdf/nihms-1011378.pdf>

wellbeing and not merely the absence of disease or infirmity."<sup>14</sup> This definition gives a more positive account to health, and even if at first sight it seems a bit non-specific, it still presumes that health should be considered to have a broader and more positive meaning and that it should not just be deduced to the absence of disease(s).

On the other hand, disease may be easier to define, but not without problems of its own. According to Christopher Boorse, disease is "a type of internal state which is either an impairment of normal functional ability, i.e., reduction in one or more functional abilities below typical efficiency, or a limitation on functional ability caused by environmental agents." He adds that health is the absence of disease.<sup>15</sup> Boorse did not believe that the definitions of health and disease should involve any value judgments, and he strove for an objective definition. He, for example, defines health as such:

- a) The reference class is a natural class of organisms of uniform functional design; specifically, an age group of a sex of a species.
- b) A normal function of a part or process within members of the reference class is a statistically typical contribution to their survival and reproduction.
- c) Health in a member of the reference class is normal functional ability; the readiness of each part to perform all its normal functions on typical occasions with at least typical efficiency.<sup>16</sup>

As it is possible to see, Boorse's conceptions of health and disease are indeed free of value judgments, and instead, he uses the terms, such as reference class, normal functional ability, and typical efficiency, to give an objective account to the concepts of health and disease. It can be argued that if obesity is widely held as a disease, then people with an excessive body mass and a very high body mass index are therefore considered unhealthy. They do not meet the objective health requirements of the reference class, but in many cases, they are still able to function normally throughout their lives with at least typical efficiency, which in turn would make them healthy. Therefore, by Boorse's definition, it may be argued that obesity itself is not a disease after all, but a value-laden disease-related concept instead.

There is also an inevitable confusion between disease and illness. David Jennings has said that only disease can be investigated by the methods of biomedicine and that illness can be considered more of an experience – and the study of it depends on phenomenologic analysis of experienced

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<sup>14</sup> Constitution (2021). *In*: World Health Organization. Retrieved May 1, 2021, from <https://www.who.int/about/who-we-are/constitution>

<sup>15</sup> Emson, H. E. (1987). Health, Disease and Illness: Matters for Definition. *CMAJ* 136, 8: p. 812. Retrieved May 1, 2021, from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1492114/pdf/cmaj00140-0029.pdf>

<sup>16</sup> *Ibid*, p. 812.

suffering. He suggests that one can be seriously diseased without being ill and that one can also be seriously ill without being diseased. The example of the former would be silent hypertension, and the example of the latter would be severe depression.<sup>17</sup> Taking all this into account, it can be concluded that the lines between human well-being and ill health can often be blurred, and physicians and doctors may often have to make their decisions based on a patient's subjective value claims and not on some objective criteria. This can be the case, e.g., in terms of some mental illnesses, or when a particular disease cannot be identified at once or is unknown. Moreover, in principle, medical science aims for objectivity, and rightfully so, but at the same time cannot dismiss the value judgments altogether. After all, value judgments constitute a critical aspect of a fair and just distribution of goods within society, and in terms of health care, ideally, should not be limited by a narrow definition of health.

In conclusion, as it is possible to see, the definitions given to the relevant terms, such as health, disease, and illness vary and can consequently affect the distribution of health care. This is simply because some conditions will fit under a specific definition and others do not – the ones that do not, are given much less attention and may therefore cause long-standing problems in society. This may be the case in terms of some mental health conditions, such as depression, for example, which could be tackled in earlier stages by preventive measures. Additionally, obesity-related health issues count as one of the primary reasons why people need medical assistance. This too could be largely avoided by wise policy choices, e.g., addressing people's eating and exercise habits on a societal level and actively promoting healthy lifestyle choices to reduce the various health-related risks. This is relevant in maintaining good health over a long period of time and cannot be accomplished by adopting the narrow definition of health only.

### **1.3 Why Justice Matters in Health Care?**

Justice is a critical principle in medical ethics. The other basic principles of medical ethics are autonomy, non-maleficence, and beneficence. The principle of autonomy requires that the patient, as a rational agent, should have all the information regarding his situation, involving the risks and benefits of the procedure and the likelihood of success. The patient should be able to make informed, voluntary, and autonomous decisions about health care services and procedures based on that information. Non-maleficence requires that health care services and procedures do not

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<sup>17</sup> *Ibid*, p. 812.

harm the patient or others involved. Beneficence requires health care services and procedures to be provided with the intent of doing good for the patient. Justice is a bit more complex idea that requires the service providers to act in coherence with existing laws and fair treatment of everyone involved. Justice in medical ethics involves the fair distribution of resources, competing needs, rights, and obligations, and dealing with potential conflicts with established legislation.<sup>18</sup>

Good health is vital for individuals and providing quality health care to individuals is essential for the community generally. Ideally, there exists a balanced relationship between the community and an individual regarding access to health care and health care amenities – and the benefits from it – reciprocity that mutually benefits both the individual and the community. According to Jennifer Prah, health has a special intrinsic value to humans, providing comfort and security that ables humans to pursue and experience different joys of life.<sup>19</sup> Good health also enables humans to be a benefit and not a burden to the society they live in, e.g., avoid sick leave, pay their taxes, and not be dependant on social welfare. A society that cares for each citizen's health and wellbeing is better off in the long run compared to a society that does not. Prah argues that in a society that does not have a good level of health, it is challenging to guarantee economic prosperity, collective security, and political participation.<sup>20</sup> Moreover, a poor level of health can lead to greater social injustices in different aspects of life. Therefore, a good level of health and providing quality health care are vital for the well-being and functioning of society.

Health care is a social good that is not always equally accessible and affordable to everyone, and there are wide gaps concerning health indicators among and within populations. Societies can experience a wide range of issues that make it difficult to reach health equity.<sup>21</sup> According to World Health Organization (WHO), in all countries and societies, whether rich or poor, the following statement holds – the lower the socioeconomic position, the worse the health. There is also a systematic gap in health factors among richer and poorer countries worldwide.<sup>22</sup> This effect is

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<sup>18</sup> What are the Basic Principles of Medical Ethics? (*s.a.*) In: Stanford University. Retrieved May 1, 2021, from <https://web.stanford.edu/class/siw198q/websites/reprotech/New%20Ways%20of%20Making%20Babies/EthicVo.c.htm>

<sup>19</sup> Gostin, L. O. (2011). Health and Social Justice. *Bulletin of the World Health Organization* 89, 1: p. 78. Retrieved May 1, 2021, from <https://www.who.int/bulletin/volumes/89/1/10-082388/en/>

<sup>20</sup> *Ibid.*

<sup>21</sup> WHO's definition to 'health equity': The absence of unfair and avoidable or remediable differences in health among population groups defined socially, economically, demographically or geographically. 'Pursuing health equity' means striving for the highest possible standard of health for all people and giving special attention to the needs of those at greatest risk of poor health, based on social conditions. Retrieved May 1, 2021, from [https://www.who.int/health-topics/social-determinants-of-health#tab=tab\\_3](https://www.who.int/health-topics/social-determinants-of-health#tab=tab_3)

<sup>22</sup> Social Determinants of Health (2021). In: World Health Organization. Retrieved May 1, 2021, from [https://www.who.int/health-topics/social-determinants-of-health#tab=tab\\_1](https://www.who.int/health-topics/social-determinants-of-health#tab=tab_1)

primarily caused by the non-medical factors – the social determinants of health. These are the conditions to which people are born into, in which they have to work, live and age, and can also include other factors, such as economic policies and systems, social norms and policies, political systems, and development agendas, which consequently have a significant impact on actual health outcomes.<sup>23</sup> WHO brings out the list of the examples of the social determinants of health, which include:

- income and social protection;
- education;
- unemployment and job insecurity;
- working life conditions;
- food insecurity;
- housing, basic amenities, and the environment;
- early childhood development;
- social inclusion and non-discrimination;
- structural conflict, and
- access to affordable health services of decent quality.

These factors can either positively or negatively affect an individual's life.<sup>24</sup> Health disparities caused by these disadvantages can therefore be considered unjust and unfair as these can ultimately influence an individual's course of life by causing physical and mental suffering, hampering one's potential to succeed, and affecting equal access to opportunities. At first glance, such significant health inequities and the consequences of these inequities would imply that health care should be a common good, accessible to everyone, e.g., like food and water in supermarkets; otherwise, there would be no point in judging some actions to be right or wrong on moral grounds suggesting that something is always morally wrong if it causes physical suffering.

United Nations Universal Declaration of Human Rights Article 25 states that:

Everyone has the right to a standard of living adequate for the health and wellbeing of himself and his family, including food, clothing, housing, and medical care and necessary

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<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in the circumstances beyond his control.<sup>25</sup>

From this, it is possible to conclude that governments should maintain at least the minimum standard of living that would enable each of its citizens to care for their own and their family's wellbeing, and health-related needs, among other things. It does not state how exactly the governments should reach this goal and what universal principles or rules should be applied to do that, e.g., in terms of health care. Therefore, it is up to the governments to decide how exactly they meet those needs. Of course, it can be argued if humans have any intrinsic right to health care at all, apart from this declaration, and do the governments themselves have a moral obligation to provide the means and access to health care, or should they leave this task to private companies instead. The first issue has to face some moral value assessments – what is the actual value of health for an individual, how people might experience one's suffering, and what constitutes some right? The second issue has to do with the balance of equality and freedom in society – it is reliant on the cultural context and shaped by the core values that are dominant in a society.

When we talk about justice in health care, the discussion ultimately comes down to the just distribution of scarce resources and the competing individual needs that make claims to these resources. Who is entitled to what, and when are they entitled to it? What principles should be applied when distributing these resources, and is there a limit to what individuals can rightfully expect? Is there any moral justification for the fact that some communities might take greater care of some of their fellow beings and at the same time neglect others? Also, it might not always be that easy to prioritize between different ways to allocate scarce resources in health care and find a proper moral justification for acting in a certain way. To answer these questions and address these problems, I will first cover the general theories of distributive justice and then look at some of the social justice issues in health care more thoroughly. Then I will discuss how these general theories of justice may affect the distribution of health care and whether any of these theories can cope with the needs and requirements of the health care system alone.

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<sup>25</sup> Universal Declaration of Human Rights (*s.a.*). In: United Nations. Retrieved May 1, 2021, from <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

## 2. Theories of Distributive Justice

In this chapter, I will give an overview of the main theories and principles of distributive justice. Firstly, I will start by explaining the difference between the two political standpoints – libertarianism and communitarianism. Then I will explain utilitarianism, egalitarianism, and contractarianism as the mainstream theories of distributive justice. After that, I will introduce the principles of social justice and the principles of justice relevant to health care.

### 2.1 Two Contrasting Political Standpoints: Libertarianism and Communitarianism

Before I cover the main theories of distributive justice, I will start by giving an outline of the two contrasting political standpoints, which are important to understand when talking about social justice and distributing some goods and benefits within society. These political standpoints are libertarianism and communitarianism. In my view, understanding these and the contrast between them helps to acknowledge the community's role in shaping the value judgments within society and the political will in applying different distributive principles, which in either case, can produce divergent outcomes.

The idea of modern communitarianism is a reaction to liberalism's devaluation of community, and its arguments are meant to contrast libertarianism.<sup>26</sup> Daniel Bell defines communitarianism as such: "it is the idea that human identities are largely shaped by different kinds of constitutive communities (or social relations) and that this conception of human nature should inform our political and moral judgments as well as policies and institutions."<sup>27</sup> Communitarianism aims to show that humans can be better described as social creatures living in groups rather than

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<sup>26</sup> Bell, D. (2020). Communitarianism. Zalta, E. N. (ed.) In: *The Stanford Encyclopedia of Philosophy*. Retrieved May 1, 2021, from <https://plato.stanford.edu/archives/fall2020/entries/communitarianism/>

<sup>27</sup> *Ibid.*

individualistic animals who live alone. Communitarians also claim that the communities in which humans live provide true meaning to their lives, and therefore people who live in these communities have a strong obligation to support, value, and care for the communities in which they live in. Failing to do that, people could become disoriented and incapable of proper political and moral judgment.<sup>28</sup>

Libertarians, on the other hand, value individual freedom and are in favor of setting firm limits to coercion. Libertarians believe that even if people can be rightfully forced to do certain things, they cannot be forced to serve the overall wellbeing of society. Moreover, libertarians extend their claims to economics, and in terms of distributive justice, they endorse the free-market economy, also free of coercion. In fact, libertarians see the wealth distribution that has been justified by the welfare states for the greater good and wellbeing of all as something that involves unjustified coercion. They argue that if people can claim strong individual and social rights, then they can also have strong economic rights.<sup>29</sup> Here lies the sharp contrast between communitarians and libertarians – while communitarians see an individual as an entity that is very much intertwined with the moral and political aspects of community's life and shaped by it, the libertarians are highly skeptical of such an approach. According to Bas van der Vossen, libertarianism "affirms a strong distinction between the public and the private spheres of life, and it insists on the status of individuals as morally free and equal."<sup>30</sup> This means that people should be treated, first and foremost, as self-governing sovereign rational beings and individual rightsholders. It is clear to see how a radical approach of either one could lead to unwanted outcomes – on one side of the spectrum, a radically communitarian approach would significantly restrict individual freedoms (including freedom of thought and freedom from state coercion), and on the other side of the spectrum, a radically libertarian approach would create vast inequalities in all aspects of life.

In regards to health care distribution, it is of critical importance whether health care distribution is driven by libertarian or communitarian core values. For example, in the former case, equality-based principles would eventually have to succumb to some libertarian non-coercion principles, which would make it difficult to provide the same quality and level of care for everyone. This would also widen the gap of health inequalities. In the latter case, health care distribution would most likely serve some moral purpose and the overall good of the community. The distribution would most

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<sup>28</sup> *Ibid.*

<sup>29</sup> Vossen, B. v. d. (2019). Libertarianism. Zalta, E. N. (ed.) *In: The Stanford Encyclopedia of Philosophy*. Retrieved May 1, 2021, from <https://plato.stanford.edu/archives/spr2019/entries/libertarianism/>

<sup>30</sup> *Ibid.*

likely occur on some fundamental equality principle. The guiding equality principle would also make health disparities to occur less likely.

## 2.2 Common Theories and Principles of Distributive Justice

### 2.2.1 Utilitarianism

Utilitarian theories are one of the most influential consequentialist theories. Utilitarianism is a theory that considers morally right actions to be the kind of actions that bring about the most good. The most famous proponents of this theory were the classical utilitarians Jeremy Bentham and John Stuart Mill, and by the 20th century, it had become the mainstream theory in ethics. At first, the approach was more hedonistic in form, and its aim was to justify some actions or policies to be better than others regarding the overall happiness and pleasure, as the main prerequisites of the utility it creates. Bentham, for example, started his argumentation in favor of utilitarianism by bringing out two distinct conditions of human experience – pleasure, and pain. He noted that humans seek pleasure and the avoidance of pain. Another important assumption of utilitarian thought is that everyone should be actively trying to promote overall happiness. Bentham extended his formula to the actions of both individuals and governments. Therefore, he concluded that our actions are right if and only if they increase overall happiness and pleasure and wrong if the actions increase unhappiness or pain. Mill agreed with most of Bentham's views but disagreed on how we ought to understand happiness. He believed that besides the quantitative aspects of happiness, there are also qualitative aspects of happiness – i.e., people can experience joy in different ways and derive it from various sources.<sup>31</sup>

Classical utilitarianism is consequentialist because it denies the moral rightness of an action to be anything other than the consequences it creates.<sup>32</sup> Therefore, if by committing a crime, someone would bring about the greatest amount of good for the greatest number, his action would be morally right, even though he had committed a morally condemnable act. For example, if someone had known about Hitler's plans and decided to kill him before he started a war, the killer would have prevented the war from ever happening and saved the lives of millions, then the act would have certainly matched the equation of a classical utilitarian. Even if he had been prosecuted

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<sup>31</sup> Driver, J. (2014). The History of Utilitarianism. Zalta, E. N. (ed.) *In: The Stanford Encyclopedia of Philosophy*. Retrieved May 1, 2021, from <https://plato.stanford.edu/archives/win2014/entries/utilitarianism-history/>

<sup>32</sup> Sinnott-Armstrong, W. (2019). Consequentialism. Zalta, E. N. (ed.) *In: The Stanford Encyclopedia of Philosophy*. Retrieved May 1, 2021, from <https://plato.stanford.edu/archives/sum2019/entries/consequentialism/>

because of it and ended up in jail, he would have done the right thing. It is not that the classical utilitarians do not think that killing someone is wrong – they only consider the greatest good for the greatest number to be more morally relevant. Therefore, condemning an action to be right or wrong depends on the fact whether the action increases the net utility. Of course, my example would be seriously condemned today if it would allow killing a person for the greatest amount of good for the greatest number – it would even be criticized by many if it involved some other less blameworthy deed. The moral character of the act itself is therefore up to scrutiny and divides utilitarians into two. It is possible to distinguish between act utilitarianism and rule utilitarianism. The first one focuses on the effects of individual actions, and the latter focuses on the effects of the types of actions. According to Stephen Nathanson, act utilitarians believe that the right action should be decided on each occasion separately – considering the net utility the action yields. Rule utilitarians, on the other hand, believe that the action itself has to follow a certain justified moral rule and that the acceptance of the moral rule would have to create more utility than other rules, or no rules at all. Then, by evaluating the obedience or disobedience of the moral rule and the consequences brought about by following that rule, it is possible to judge an act to be right or wrong.<sup>33</sup> It is clear that if some form of the utilitarian theory of distributive justice would have to be applied, and in order it to be valid, as well as acceptable by the majority, it would have to be rule utilitarian because of its more comprehensive moral nature. Having said that, the utilitarian theory of justice still faces some challenges, and in terms of health care, it would seem plausible to apply it on some levels of distribution. However, this theory cannot deal with the different requirements of the health care system alone – moreover, it certainly cannot meet the varying individual health care needs independently. I will cover these issues in the third chapter of this thesis.

### **2.2.2 Egalitarianism**

Egalitarianism can be described as the equality of all people in some respect. Egalitarians value some form of equality above all, and even though their interpretations and understanding of the concept vary, they tend to rest on the idea that people are equal in fundamental moral worth. Therefore, people should be treated the same way regarding the goods they get or are entitled to, or in respect to some other advantages. The notion of equality is therefore central in their argumentation. Equality is undoubtedly a very vague and contradictory idea in the sense that it

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<sup>33</sup> Nathanson, S. (*s.a.*). Act and Rule Utilitarianism. In: *Internet Encyclopedia of Philosophy*. Retrieved May 1, 2021, from <https://iep.utm.edu/util-a-r>

directly contradicts freedom, and any limitations on freedom have to be justified by morally valid reasons for them to count. Additionally, if freedom can be easily considered good in itself, then justifying equality is a bit more complicated task. Moral beliefs vary, these are greatly individual and can also depend on the cultural context, but first and foremost, moral beliefs and evaluations are inherent value judgments of individuals. By advocating for equality, someone is usually claiming something that was not previously his – such as some specific rights or a higher income, for example, and by protecting one's rights to liberty or non-interference, someone is usually protecting something that belongs to him, something that would violate his rights in some way. Both sides can argue on moral grounds, and thus, equality can be considered a complex and morally charged concept with way too many important aspects to consider. Therefore, I will only briefly introduce the theory in this chapter and explain some aspects relevant for the next paragraph of this thesis.

According to Richard Arneson, all egalitarian theories have something in common – he states that: "egalitarian doctrines tend to rest on a background idea that all human persons are equal in fundamental worth or moral status."<sup>34</sup> As mentioned, there are different ways one can interpret equality, e.g., one can take into account the moral status of a person, opportunities people have, their income levels, welfare, and so on.<sup>35</sup> Therefore, it is essential first to understand why equality might be desirable in the first place – is some form of equality good for the sake of reaching some end, or is it considered good as an end in itself? He, therefore, distinguishes between instrumental egalitarians and non-instrumental egalitarians. In the first case, equality has instrumental value, and by affirming the desirability of equality for the sake of some goal, e.g., allowing equal access to health care, or maintaining a universal health care system, for the sake of avoiding more significant health disparities, increasing overall wellbeing, contentment, and the feeling of solidarity in the community, one would consider himself an instrumental egalitarian. The alternative means that equality should be understood as a component, or a requirement of something, in and for itself – such as justice, for example, which makes equality desirable for its own sake. In the latter case, one considers himself to be a non-instrumental egalitarian.<sup>36</sup>

In regards to equality and justice, especially social justice, equality counts as one of its main principles, and to make sense of its meaning, one would have to ask – what kind of equality does

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<sup>34</sup> Arneson, R. (2013). Egalitarianism. Zalta, E. N. (ed.) *In: The Stanford Encyclopedia of Philosophy*. Retrieved May 1, 2021, from <https://plato.stanford.edu/archives/sum2013/entries/egalitarianism/>

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

justice require<sup>37</sup>, and what kind of limits does justice set on equality? In terms of social justice, it is clear that our common sense would never really let equality principle rule out desert principle entirely, but that may not be the case in terms of health care, for example, with universal access granted almost entirely based on citizenship in many countries. This implies that there is something characteristically unique and distinct about health care, which also makes the equality principle necessary and sufficient condition for the just distribution of it. The task of an egalitarian is to show what these equality claims are and how these claims can be linked to morality for them to be valid.

There may be several reasons why justice may require or allow the equal distribution of relevant goods. Firstly, it may be necessary, if the members of some group have no relevant distinguishing features on what grounds the decisions about just distribution of some goods should be made. Then, it may also be required when some goods are being distributed around, and people have unequal claims to this good, but there are no adequate or reliable ways to measure and identify those claims. Additionally, equal distribution of goods can also be justified with the claim that no one should be in a worse situation than anyone else because of some personally possessed characteristics, for which he or she cannot claim personal credit. These characteristics count as something morally arbitrary and may include strength and intelligence, for example. Further on, justice may also require equality in some aspects of life because it is a fundamental requirement for justice to show equal concern and respect for people.<sup>38</sup>

One major objection that egalitarianism has to face is that it fails to evaluate the agency of individuals and the relevant contributions they make regarding their own wellbeing and thus unduly distributes goods based on the principle of equality rather than on desert. An answer to this objection can be found in a certain type of egalitarianism that sets a starting point, where all the shares of the relevant goods being distributed are considered equal, but any departure from that starting point, or baseline, would allow certain inequalities if these are caused by the responsible choices of individuals. Luck egalitarianism, for example, disallows any disadvantages caused by bad luck alone but allows inequalities if these can be attributed to the responsible choices of individuals.<sup>39</sup>

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<sup>37</sup> Miller, D. (2017). Justice. Zalta, E. N. (ed.) In: *The Stanford Encyclopedia of Philosophy*. Retrieved May 1, 2021, from <https://plato.stanford.edu/archives/fall2017/entries/justice/>

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*

### 2.2.3 Contractarianism

Ever since the Enlightenment, moral and political philosophers have tried to figure out a way how to ground the moral dispositions and norms and to justify the legitimacy of the state authority – or both, with some kind of hypothetical agreement or a contract theory, that all people under certain circumstances would reasonably accept. The most prominent examples of these would be the theories of Hobbes, Locke, Kant, Rousseau, to name a few. Contemporary philosophers have also tried to figure out valid contract theories themselves, and the most prevalent and widely known of these would be the theory presented by John Rawls in his book "Justice as Fairness". In his book, he argues for the principles of justice that would consider both the ideas of liberty and equality inherent to a democratic society and the vast array of social and cultural inequalities that exist in a society. Then he aims to show how these inequalities could reasonably be justified under the principle of equal liberties for all. Like the other contract theorists, he also begins by setting up a hypothetical situation, which he calls the 'original position'.

Rawls's 'original position' is a hypothetical situation in which people have to decide on the basic structure of a society – first and foremost, on the structure of the political and social institutions<sup>40</sup> that will govern their lives, without knowing anything about their own actual placement, or the exact circumstances they are going to face in that life. Since nobody knows how exactly they are going to end up, everyone will try to be as impartial as they can. He calls this condition of impartiality the 'veil of ignorance'. After setting up the 'original position' and justifying it for the sake of a fair outcome, Rawls then formulates his principles of justice:

*First principle:* Each person has the same inalienable claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all;

*Second principle:* Social and economic inequalities are to satisfy two conditions:

- a) They are to be attached to offices and positions open to all under conditions of fair equality of opportunity;
- b) They are to be to the greatest benefit of the least-advantaged members of society.<sup>41</sup>

According to Rawls, condition a) counts as the principle of equality of opportunity, and condition b) as the difference principle. Additionally, the first principle takes priority over the second

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<sup>40</sup> Wenar, L. (2017). John Rawls. Zalta, E. N. (ed.) In: *The Stanford Encyclopedia of Philosophy*. Retrieved May 1, 2021, from <https://plato.stanford.edu/archives/spr2017/entries/rawls/>

<sup>41</sup> *Ibid.*

principle, and condition a) takes precedence over the condition b). In regards to the first principles of justice, 'embodied in the political constitution',<sup>42</sup> Rawls emphasizes that what justice requires, first and foremost, are equal rights and liberties to all under normal circumstances and that these rights and liberties should not be traded off for other social goods, even if this would mean slower growth economically. Secondly, he emphasizes that citizens should be not only formally equal but also substantially equal – with everyone having an equal opportunity to hold a public office, for example. Rawls considers it to be the fair value of political liberties. In terms of his second principle, which applies mainly to economic institutions, he claims that justice does not allow distinctions on morally arbitrary circumstances, and the fact, whether someone was born to a wealthy or low-income family, should not be a valid reason to hold anyone back from having the same positions and offices in a society, if they are equally gifted with the same talents and willingness. The second condition of the second principle is self-explanatory – inequalities are allowed only insofar that these inequalities would benefit the least advantaged members of a society the most. It thus regulates the distribution of wealth and income.<sup>43</sup>

Rawls is concerned with the fairness of social institutions and the just distribution of offices and positions, also income and wealth, under the fair principles of equal rights and liberties for all. He argues that a social system aiming to be fair should take the principles of justice into account. Even though Rawls did not pay any special attention to the topic of health care in his theory, many scholars and philosophers have tried to extend his principles of justice to cover this much-disputed subject as well.<sup>44</sup> One of them is Norman Daniels, among others, and I will cover this subject in the third chapter of this thesis.

## 2.2.4 The Principles of Social Justice

The most important principles of social justice are equality, need, and desert.<sup>45</sup> In his book "Principles of Social Justice", David Miller proposes a kind of plural view about the way we should look at justice. According to him, modern liberal societies can be described in terms of three

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<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

<sup>44</sup> Arda, B.; Ekmekci, P. E. (2015). Enhancing John Rawls's Theory of Justice to Cover Health and Social Determinants of Health. *Acta Bioethica* 21, 2. Retrieved May 1, 2021, from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4915381/>

<sup>45</sup> Simm, K. (s.a.). Distributive Justice. In: *Käitumis-, sotsiaal- ja terviseteaduste doktorikooli terminoloogiaeab.* Retrieved May 1, 2021, from [http://www.doktorikool.ut.ee/ksst/term/ET/kategooriad/riigiteadused/poliitikafilosoofia/distributive\\_justice](http://www.doktorikool.ut.ee/ksst/term/ET/kategooriad/riigiteadused/poliitikafilosoofia/distributive_justice)

different types of relationships or modes of association: citizenship, solidaristic community, and instrumental association. The principles that fit each type are considered the following: the equality principle fits with citizenship, the need principle fits with the solidaristic community, and the desert principle fits with the instrumental association.<sup>46</sup>

Citizenship constitutes a type of relationship within a political society in which members are related to each other through their fellow citizens. The distributive principle corresponding to it is equality.<sup>47</sup> This principle of equality determines how people are treated alike and in the same manner, as everyone else within a political society they live in, especially concerning the equal rights they hold, and of course, the obligations they have. In Miller's view, there is a dispute about the proper definition of citizenship. Some would argue that citizenship should just be understood in terms of the equality of legal rights, and others think that it should be understood in terms of social fairness instead. This means that people cannot relate to each other as political equals unless there is some level of substantial equality between them. Citizenship, in a broader view, can also be understood as a status that opposes the inequalities the liberal market economy creates. Additionally, on some occasions, it counts as a sufficient requirement to further the claims of justice based on need and desert – to be more exact, this applies when some people cannot provide the necessary means and resources for a decent life themselves. These resources may include medical aid, housing, income support, and so on.<sup>48</sup>

The second mode of association, solidaristic community, can be attributed to a relatively stable group with a common identity, bound together by culture and beliefs. This mode of association can also be attributed to a smaller group of people that share a mutual understanding and mutual trust. According to Miller, this mode of association has lost much of its intensity in time – compared to earlier times and primordial forms of human association, for example, it is much lighter in form in the contemporary liberal societies we live today, but can still be recognizable in a family environment, religious groups, work environments, different social clubs, and so on. The main principle that corresponds to this type of relationship is the principle of need. Needs are defined in regards to different kinds of groups and their ethos, respectively. Relieving those needs is then the task of each member of the group, and the duty to fulfill this task is distributed among the group's members in proportion to each member's ability and the extent of his or her liability.

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<sup>46</sup> Lever, A. (2001). Principles of Social Justice by David Miller. *Canadian Journal of Political Science* 34, 1: p. 195. Retrieved May 1, 2021, from <https://www.jstor.org/stable/3232561>

<sup>47</sup> Miller, D. (2001). *Principles of Social Justice*. Cambridge (MA): Harvard University Press, p. 30-32.

<sup>48</sup> *Ibid*, p. 31.

This, of course, can vary depending on the circumstantial nature of the group and also on the very nature of the ties within this group. It is also noteworthy that each of these communities can have a sense of standards that a good human life must meet, and from this basis, it is also possible to distinguish between needs and wants.<sup>49</sup>

The third type of relationship is the instrumental association, and the corresponding principle to it is the principle of desert. Economic relations, where people collaborate to fulfill their aims and purposes and relate to one another as buyer and seller, can be an example of this mode of association. In this association, each person acts as a free agent and uses his skills and talents to advance his or her goals. Justice, according to Miller, is done "when each receives back by way of reward an equivalent to the contribution he makes."<sup>50</sup> A person's deserts are therefore relative to his or her contribution. The desert principle faces many difficulties since it is difficult to agree on the relative nature of it. Nevertheless, the distinct features of this relationship are that they are usually voluntary, contractual, there is no obligation to engage in them, and it is always possible to withdraw from them. Each person in this type of relationship associates with others to advance the goals he either shares with others or pursues for the sake of his or her wellbeing.<sup>51</sup>

### **2.2.5 The Principles of Justice in Health Care**

As mentioned above, social justice rationing may be better understood in terms of the three different modes of association human beings engage in the contemporary liberal societies and the relevant principles that correspond to these modes – these principles are the need, desert, and equality principles. In regards to health care, Cookson and Dolan<sup>52</sup> have described the three substantive principles of justice that are used in priority setting and decision making in this particular area – these are the need, maximizing, and egalitarian principles. Need principles require that health care should be distributed according to need, maximizing principles require that health care should be distributed in order to achieve the maximum benefit, and the egalitarian principles require that health care should be distributed in order to reduce inequalities.

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<sup>49</sup> *Ibid*, p. 26-27.

<sup>50</sup> *Ibid*, p. 28.

<sup>51</sup> *Ibid*, p. 27-30.

<sup>52</sup> Cookson, R.; Dolan, P. (2000). Principles of Justice in Health Care Rationing. *Journal of Medical Ethics* 26, 5: p. 323. Retrieved May 1, 2021, from <https://www.jstor.org/stable/27718561>

To start with, the need principle can be viewed from three different angles. The most common way is to describe it in terms of the degree of ill health – an immediate threat to life would be the most critical form of it. The second, broader definition involves immediate pain and suffering in the definition as well. Therefore the need principle has sometimes been equated with the term 'rule of rescue', which means that the society is held responsible for saving all members facing immediate threats to life. The third way of looking at this principle is taking into consideration the individual's whole lifetime of ill health rather than the immediate situation. This means that if an individual has enjoyed an entire lifetime of good health, then his or her immediate needs may not count as much as someone's needs, who is younger and facing issues of immediate ill-health.<sup>53</sup>

The maximizing principle can be best understood in economic terms. It is a utilitarian principle, and therefore also consequentialist, but should not be understood in terms of or confused with the ideas of classical utilitarianism. What this principle implies always depends on what estimates have been made, and the consequences should be understood in terms of health rather than happiness. Maximizing population health would be an obvious example of applying this principle. Additionally, one could also apply this principle when evaluating the amount of health or the remaining lifespan some individual is expected to gain in relation to others. The maximizing principle could also be used to maximize the overall wellbeing or flourishing, which would also include other aspects of health – such as social wellbeing, for example.<sup>54</sup>

Finally, one form of the egalitarian principle holds that everyone is entitled to a similarly long and healthy life, and this is sometimes called the 'fair innings' argument. The second form of this principle holds that it is more important to equalize people's opportunities for lifetime health than to equalize the levels of achieved health since the former would also take into account individual freedom and autonomy in making choices that can influence health. Justice is done if people who choose not to live healthier lives also achieve lower levels of health in turn,<sup>55</sup> and *vice versa*.

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<sup>53</sup> *Ibid*, p. 324.

<sup>54</sup> *Ibid*, p. 326.

<sup>55</sup> *Ibid*, p. 327.

### 3. Towards More Equal and Beneficial Health Care Distribution for All

In this chapter, I will first ask if there are any arguments for the right to health care and if yes, then what kind of arguments these may be. Then I will cover the utilitarian view of justice in health care and the egalitarian arguments for universal health care and see why these cannot cope as the sole principles in this particular area alone. Also, I will look more thoroughly at some of the aspects of Norman Daniels's theory of just health care, also the way it would be possible to extend John Rawls's principles of justice on the distribution of health care. This theory may also encounter some difficulties because of the limitations it sets for itself. Finally, I will explain why focusing on these principles and theories of just distribution may not be enough in removing health equity gaps entirely and show where the roots of the problems regarding justice in health and health care can really be found.

#### 3.1 Is There a Right to Health Care?

There has been much dispute whether health care could be considered a fundamental human right. To answer this question, firstly, one has to figure out what kind of rights one is talking about – it is possible to differentiate between positive and negative rights. According to Andrew Melnyk: "positive rights are rights that one be provided with certain things; and so they entail obligations on others, not merely to refrain from interfering with the bearer of the rights, but to see to it that one gets whatever one has the rights to."<sup>56</sup> Negative rights, on the other hand, refrain us from interfering with the bearer of the rights and also put no obligations on us to provide goods to others. Fundamental negative rights include life, liberty, and the pursuit of happiness, for example.<sup>57</sup>

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<sup>56</sup> Melnyk, A. (1989). Is There a Formal Argument against Positive Rights? *Philosophical Studies: An International Journal for Philosophy in the Analytic Tradition* 55, 2: p. 205. Retrieved May 1, 2021, from <https://www.jstor.org/stable/4320013>

<sup>57</sup> Bradley, A. (2010). Positive Rights, Negative Rights and Health Care. *Journal of Medical Ethics* 36, 12: p. 838. Retrieved May 1, 2021, from <https://www.jstor.org/stable/25764330>

It is easy to see that health care falls into the first category because it requires some other party to take positive actions to provide it when someone makes claims for it – it may entail government taxation and the redistribution of resources, as well as the positive steps from health care service providers. Some would argue that the only legitimate rights are the negative rights since only these rights can be universally and unconditionally understood and therefore constitute a criterion of any fundamentality.<sup>58</sup> This is a proposition put forward by libertarian thinkers, who also believe that any infringement of property rights, such as taxation and the redistribution of wealth to pay for the health care of people who cannot afford it themselves, would be unjust. According to Andrew Bradley,<sup>59</sup> if health care would be a fundamental human right, then it would be unacceptable if governments would deprive any of their citizens of obtaining it, and governments should therefore also provide it to those people who are too poor to provide it for themselves. This would, of course, infringe the rights of these people, who see it as immoral to provide unearned goods to anyone. He also supposes that if positive rights were guaranteed without limitations, then there would be no limit to what people could claim, and the government expenditures would therefore skyrocket.

It is undoubtedly less problematic to understand why health alone can be considered a fundamental right, and thus, why enforcing the governments to take necessary and appropriate steps to maintain a healthy living environment and promote healthy living habits can be derived from this, but as soon as one starts talking about rights to health care, suddenly the issue gets a bit more problematic, because of the reasons mentioned above. There may be more reasons behind this, but in my opinion, the disagreement about the right to health care ultimately comes down to the dispute about the moral value judgment given to health and health care and who should therefore be entitled to get it. So, in order to figure this problem out, one would first have to place health above the dichotomy of positive and negative rights, and consequently see whether health would count as valuable as some of the other subjects of negative rights, such as life or liberty, for example, and what role health care has to help to achieve this particular end.

Health care could be considered a necessary means for achieving or maintaining good or average health, which in turn can be important for enjoying at least a normal life. Needless to say, that at one point or another, we all need it. Similarly, the government's task is to protect the rights to life

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<sup>58</sup> Melnyk, A. (1989). Is There a Formal Argument against Positive Rights? *Philosophical Studies: An International Journal for Philosophy in the Analytic Tradition* 55, 2: p. 209. Retrieved May 1, 2021, from <https://www.jstor.org/stable/4320013>

<sup>59</sup> Bradley, A. (2010). Positive Rights, Negative Rights and Health Care. *Journal of Medical Ethics* 36, 12: p. 838. Retrieved May 1, 2021, from <https://www.jstor.org/stable/25764330>

and liberty – also necessary preconditions for maintaining peace and security in society, which are valuable for the sake of themselves. We all have an equal claim for this too. That said, we may never know when we are unfortunate enough that someone attacks us on the street, or when we might get a deadly infectious disease, such as the coronavirus, or get into a car accident, which would consequently make us rightfully claim justice or medical help. We may also need constant medical attention because of some unfortunate chronic disease we have, which does not in any way affect our lives unless left untreated. It is also possible to see that our value judgments on life, liberty, and health could differ on arbitrary reasons – e.g., in which neighborhood or country we live in, or the state of health we currently experience, but that does not actually make life, liberty or health instrumentally less valuable for any of us. The way our current condition makes us perceive the value of life, liberty, and health, may not always be objective. Health and health care both have an instrumental value for us. Good health lets us function properly, go on with our daily lives and achieve our goals; health care seeks to remedy the injuries or other hindrances that may stop us from adequately functioning or taking part in our daily lives properly. Therefore, I may conclude that health actually could be considered a negative right and that no-one should be able to interfere with my right to enjoy my health or harm my health, in that sense, and that this also requires government's positive actions, e.g., maintaining my right to clean living environment. A prohibition of smoking in public areas would be an excellent example of the government's positive steps towards protecting my negative right to health. I may also take my argument further and say that it is indeed the government's responsibility to provide everyone universal access to health care since not having access to health care may cause someone to die prematurely, which would be an infringement on their negative right to life.

In my view, applying the universal health care system, which would guarantee that everyone's health care needs would be met on an almost equal basis, does not actually require that one would perceive health in some way similar to the negative rights each of us has, but this would certainly go a long way. In the end, it is up to the governments to decide how and on which terms they grant access to health care, or if they make it any of their responsibility at all. What matters, in the end, is the moral value judgment given to health, and the reality of how various health conditions may affect each of our lives at any point, and the possible consequences of us not being able to pay for health care needs, and the financial hardship it may therefore also entail. The right to health care may be, first and foremost, considered to be more of a judgment about the virtue of a society to care for its members before it becomes a discussion whether it is a negative or a positive right. Nevertheless,

shifting the moral value judgment radically towards either side may have tremendous consequences on access to health care and also on health equity.

### 3.2 Utilitarianism and Justice in Health Care

Utilitarianism, the theory that considers these actions to be morally right, which bring about the most good for the greatest number, is absolutely justified when it is applied on some levels and aspects of health care distribution. For example, it is easy to see the benefits that are the direct consequences of mass vaccinations, the promotion of healthy lifestyle choices, the market-based distribution of the various health care services, which also include the various health care products available at pharmacies. These are all mainly distributed on utilitarian grounds. Therefore, it is plausible to claim that utilitarian approach regarding health care distribution can undoubtedly go a long way in creating utility, especially when we talk about health care in a bit wider scope or in terms of the positive definition of health, which also includes some other factors of good health, such as the social and emotional wellbeing of individuals. After all, it is commonly held that prevention is the best cure. But even if the net utility, which can be directly linked to the distribution of various health care services that meet many of our health care needs and preferences, cannot be underestimated, utilitarianism still faces some problems because of its very nature. I will now discuss some of these.

To start with, utility and health are not usually treated as synonyms. These are two different concepts with a wide array of different meanings. If some public health policy makes its aim to maximize health on utilitarian grounds, then it may unwilfully neglect the other goods that may also have considerable moral value in terms of providing quality health care. Therefore, maximizing health may not produce the same results as the aim of maximizing utility.<sup>60</sup> For example, if some policy requires the government to advance population health indicators by subsidizing different programs that enable the citizens to exercise in various sports clubs for less money, or for free, or decides to build new public sports facilities for this purpose instead, and at the same time does not invest in modern medical technology, or quality medical education, then maximizing health may not yield the same results as maximizing utility, which would also include health as one of its aspects.

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<sup>60</sup> Bellefleur, O.; Keeling, M. (2016). *Utilitarianism in Public Health*. Montréal, Québec: National Collaborating Centre for Healthy Public Policy. Retrieved May 1, 2021, from [http://www.ncchpp.ca/docs/2016\\_Ethics\\_Utilitarianism\\_En.pdf](http://www.ncchpp.ca/docs/2016_Ethics_Utilitarianism_En.pdf)

Additionally, utilitarianism is an impartial theory because of the way it calculates utility in 'units' of pleasure or happiness. Utilitarians are concerned with the net utility that the action creates and not with the fact of how the utility is distributed between individuals. This is contradictory to one of the most important requirements of justice, that everyone should get their due, regardless of how much utility it creates. David Miller puts forward an example, that if some people are very good at turning resources into wellbeing, then there should be a rule that explicitly privileges them, which in turn would be contrary to the way of justice. He relies on the idea of Rawls that states – "each member of society is thought to have an inviolability founded on justice which, even the welfare of everyone else cannot override."<sup>61</sup> An example of this utility calculus would be an abstract scenario, in which it would be more cost-effective to shut down a care unit in a certain rural area with very low population density and low tax income and use the money to build an extra floor to a hospital in an area – five hours drive from the rural area – with a higher population density and higher tax revenue. In that case, one would have to assess the utility taking into account the many different variables that cannot always be compared to one another in the first place. Hence, utilitarians face a problem with the utility calculation. This may also become evident when some policy needs to be adapted, and there are limits to the budget. For example, in regards to advancing population health in ten years, one has to choose between building a new hospital or a public sports complex. In this case, one would also have to assess the utility in terms of the happiness of some, the unhappiness of others, and also the probable future health indicators – which may prove to be a difficult task. Therefore, utilitarians also have to deal with the endless quantity *vs.* quality dilemmas common to utilitarianism when calculating the consequences of some actions.

Another problematic issue utilitarians have to face, according to David Miller, is the fact that they also cannot grasp the complete sense of justice because of their strict consequentialist and forward-looking nature. Utilitarians do not want to adopt rules which would reward people for their past actions and give them what they deserve or what they are entitled to. These entitlements may be created by some events in the past, e.g., people entering into a certain type of agreements. Justice, on the other hand, also has to deal with the different kinds of backward-looking reasons. The consequentialist nature of utilitarianism does not commit to the causes of the past – why it matters that people should get what is due to them because of their past actions or deeds.<sup>62</sup> There is a certain truth to the way a utilitarian treats people who are no longer useful to him. In terms of

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<sup>61</sup> Miller, D. (2017). Justice. Zalta, E. N. (ed.) In: *The Stanford Encyclopedia of Philosophy*. Retrieved May 1, 2021, from <https://plato.stanford.edu/archives/fall2017/entries/justice/>

<sup>62</sup> *Ibid.*

health care, public health care has many purposes. Its purpose is not only to maximize the health of the population, but its aim is also to reduce health inequalities. These inequalities may be the consequences of the past, and these inequalities may also vary, just as the causes of them. It is also important to reduce health inequalities because these inequalities may cause other significant social inequalities in the future or prove out to be very unfair from the perspective of justice. A utilitarian may find it hard to justify on these grounds why he should provide care for those who are detrimentally ill and who would not be able to contribute to the overall happiness for this reason; or for the people who may suffer ill health because of some government's insufficient environmental or health policies.

### 3.3 Extending Rawlsian Theory to Health Care Distribution

As I mentioned earlier, Norman Daniels is one of many philosophers who has offered a comprehensive theory concerning the just distribution of health care. In his book "Just Health Care",<sup>63</sup> he starts by explaining the special moral worth of health has for humans. This value judgment is the underlying premise of his further argumentation. He claims that health care is unique because it plays a crucial role in helping people achieve and maintain species-typical normal functioning. He adds that health care has a tendency to promote happiness, but the utilitarian happiness claim is not the main reason why health care has special moral value for us. According to Daniels, the main reason can be found in the following statement: "the impairments of normal species functioning reduce the range of opportunity open to the individual in which he may construct his 'plan of life' or 'conception of the good'."<sup>64</sup> Thus he considers the impairments of health to constitute an objective moral basis why health care is special. The impairments of health can negatively affect people's choices of goals, projects, and plans, and therefore people have a fundamental interest in establishing social institutions, such as health care systems. The impairments of normal species functioning can consequently negatively affect people's normal range of opportunities in a given society and also have a negative effect on fair equality of opportunity.<sup>65</sup> Based on this common ground of equality of opportunity, Daniels attempts to extend Rawlsian theory to health care distribution and justify it accordingly.<sup>66</sup> Before I give a brief

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<sup>63</sup> Daniels, N. (1985). *Just Health Care*. Cambridge: Cambridge University Press.

<sup>64</sup> *Ibid*, pp. 26-27.

<sup>65</sup> *Ibid*, p. 28.

<sup>66</sup> Arda, B.; Ekmekci, P. E. (2015). Enhancing John Rawls's Theory of Justice to Cover Health and Social Determinants of Health. *Acta Bioethica* 21, 2: p. 9. Retrieved May 1, 2021, from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4915381/>

overview of some aspects that Daniels had in mind when he attempted to extend Rawls's principles of justice to health care distribution and the conclusion he reached, I will cover some other aspects, which are also important to consider when one tries to extend Rawls's theory to health care distribution.

Since Rawls built up his 'original position' argument assuming in an idealized way that individuals who were making the rational choices behind the veil of ignorance were normal, active, and fully cooperating members of society over the course of a complete life, he did not consider real-life health concerns to be the primary determinants of the fair distribution of goods.<sup>67</sup> The reason behind it is that according to Rawls, there are two types of primary goods – these are either natural or social by source. Natural primary goods, contrary to the social goods, which are distributed by different social institutions, and which include rights, freedoms, power, opportunities, income, welfare, and also self-respect<sup>68</sup> – are arbitrary by nature since these are mainly due to the natural lottery. Because of its arbitrariness, the society has no direct obligation to distribute resources based on these variables on the grounds of the principles of justice. The natural primary goods include intelligence, health, imagination, and vigor. Thus Rawls excluded health from his thought experiment.<sup>69</sup> Rawls instead believed that health care should be distributed based on the substantial equality of opportunity principle within society, with equal opportunities for health care, similarly to higher education, for example.<sup>70</sup>

According to Arda and Ekmekci, in order to enhance the just distribution of health care with Rawlsian principles of justice, firstly, it is essential to show that the set of primary social goods should also include health. Secondly, it is important to show how health can be a necessary prerequisite for the realization of equal rights and liberties for all and thus relate to the first principle of justice. The first issue requires that health must comply with the other social goods. One way to cover the first requirement would be to say that the risk of losing health at any point of life cannot be eliminated. Hence it would be rational to expect that the people behind the veil of ignorance would be precautionous and minimize the risk. Health could be thought of as a social good derived

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<sup>67</sup> Daniels, N. (1985). *Just Health Care*. Cambridge: Cambridge University Press, p. 43.

<sup>68</sup> Even though Rawls also included self-respect as a primary social good, which is a necessary precondition for individuals in reaching their life plans and goals, he did not analyze how poor health could be detrimental to one's self respect and sense of dignity, and therefore be thought of as a primary social good on these grounds.

<sup>69</sup> Arda, B.; Ekmekci, P. E. (2015). Enhancing John Rawls's Theory of Justice to Cover Health and Social Determinants of Health. *Acta Bioethica* 21, 2: p. 3. Retrieved May 1, 2021, from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4915381/>

<sup>70</sup> Favor, C.; Lamont, J. (2017). Distributive Justice. Zalta, E. N. (ed.) *In: The Stanford Encyclopedia of Philosophy*. Retrieved May 1, 2021, from <https://plato.stanford.edu/archives/win2017/entries/justice-distributive/>

from this kind of reasoning. There may be another obstacle while including health to a set of primary social goods – namely its immeasurability. It would be difficult to identify the worst off in society, who should be entitled to get the greatest benefits regarding the difference principle. This argument can be refuted if one considers the many methods developed to measure the health status, the social determinants of health and then compares the relevant data to identify the worst off.<sup>71</sup> In order to see how health is a necessary precondition for the realization of equal rights and liberties, one would have to assess the positive effects the fulfillment of the conditions of the second principle of justice has on the normal opportunity range of individuals. For example, in reference to Arda and Ekmekci, Daniels builds his argument about the special value of health on Rawls's definition of normal opportunity range and states that: "meeting the health needs of individuals by health services and social determinants of health makes an essential contribution to fair, equal opportunity," which is also "indispensable to realize the first principle."<sup>72</sup>

Norman Daniels extended Rawls's theory to health care institutions by broadening the fair equality principle so that it also protected individual shares of the normal opportunity range. When Rawls discussed the fair equality principle, he focused on producing fairness in the competition for jobs and careers. Daniels argues that this principle should have a broader notion of equal opportunity, to be more exact, that "it should also be concerned with the individual shares of the normal opportunity range, the array of life plans it is reasonable for persons to choose in a given society."<sup>73</sup> Thus health care institutions should have the task of protecting people against severe impediments of opportunity and their failure to enjoy normal species functioning. On this account, individual shares of the normal range are fair when positive steps are taken, ensuring that individuals maintain normal functioning.<sup>74</sup> Daniels's ultimate aim is to show that from the perspective of justice, the fundamental moral function of the health care system is to guarantee fair equality of opportunity in society. He explains that once we observe the effects of diseases and illnesses on an individual's share of the normal opportunity range, it is possible to understand the importance of meeting people's health care needs fairly. For the distribution of health care services to be just, also the principle guaranteeing equality of opportunity must underlie it.<sup>75</sup>

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<sup>71</sup> Arda, B.; Ekmekci, P. E. (2015). Enhancing John Rawls's Theory of Justice to Cover Health and Social Determinants of Health. *Acta Bioethica* 21, 2: pp. 7-8. Retrieved May 1, 2021, from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4915381/>

<sup>72</sup> *Ibid*, p. 9.

<sup>73</sup> Daniels, N. (1985). *Just Health Care*. Cambridge: Cambridge University Press, p. 50.

<sup>74</sup> *Ibid*, p. 57.

<sup>75</sup> *Ibid*, pp. 39-41, 57.

It is clear why John Rawls's theory cannot cope with the requirements of the health care system. Firstly, he elaborated his theory for the fair distribution of different kinds of goods, and secondly, he did not consider health to be a primary social good, but rather a natural primary good that was due to people by the arbitrariness of the natural lottery. Norman Daniels, however, elaborated a theory of the just distribution of health care, but he limited his theory to the narrow definition of health – the definition that Christopher Boorse offered, which would also be free of any value judgments. Therefore he did not consider the more positive account of health to be relevant, which, for example, would also include the complete mental and social well-being of people to be the necessary precondition for achieving the best possible levels of health. Thus, as it was possible to contradict Boorse's definition of health with an example of obesity and the body mass index as the objective and relevant criterion to assess it, it would also be possible to contradict Daniels's theory of health care and say that it would mostly allow medical intervention when the risks have actually manifested themselves, and not because of some preventive considerations. This means that so long as people can function normally, even when they are obese and thus belong in a specific risk group, any kind of medical intervention would not be justified because their current condition does not hamper their normal opportunity range or negatively influence the equality of opportunity in any way, besides some inconveniences they may endure due to their condition. Even though Norman Daniels is very much on point when he describes what principle should underlie the just distribution of health care, and while he, in fact, also considers preventive care to be as much important as acute care, in fulfilling the tasks of health care institutions, he clearly states that it is enough for his purposes "that the line between disease and the absence of disease is, for the general run of cases, uncontroversial and ascertainable through publicly acceptable methods, such as those of the biomedical sciences. It will not matter if what counts as a disease category is relative to some features of social roles in a given society." He explains that the bias of the health care system towards acute care and its dismissal of preventive and holistic care can be instead derived from the powerful economic and social forces and not the proper definition of disease.<sup>76</sup> This proves that according to Daniels, the primary purpose of the health care system is somewhat limited to being something similar to a safety net and not as something that would also make its primary aim to keep people away from requiring any kind of medical intervention as long as possible.

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<sup>76</sup> Daniels, N. (1985). *Just Health Care*. Cambridge: Cambridge University Press, pp. 29-30.

### 3.4 Egalitarian Arguments for Universal Health Care

According to WHO, universal health care, or universal health coverage, means that "all individuals [...] receive the health services they need without suffering financial hardship. It includes the full spectrum of essential, quality health services, from health promotion to prevention, treatment, rehabilitation, and palliative care across the life course."<sup>77</sup> The conception of universal health care entails some form of egalitarianism since it holds that all people should be treated equally in that specific aspect of life. According to Lesley Jacobs, it is widely believed among political philosophers and public officials that some sort of distributional equality can provide a moral basis for universal health coverage.<sup>78</sup> Universal coverage can be reached in many different ways – it can be granted by public insurance schemes, it can be provided by government funding only, or it can also be achieved by a mixture of different possibilities. For the sake of clarity, at this moment, I am not concerned with how and by which methods universal health care can be reached or adapted within a community – I am rather concerned with what arguments would justify equal access to health care. Therefore I will now discuss the many ways justice may require access to health care on an equal basis.

One way of approaching equal access to health care services and universal health care would be in reference to Norman Daniels and John Rawls. This would be to say that unequal access to health care and impairments of health would have adverse effects on the opportunities people can exercise, which would violate the fair equal opportunity principle. Though there are differences in Daniels's and Rawls's interpretations of the fair equality principle, these can be removed once health would be considered a primary social good. In reference to Norman Daniels<sup>79</sup> and one of the egalitarian claims of justice, it is required that society protects the normal functioning for all, and therefore the opportunity range open to individuals. There is, of course, a disagreement on how much equality does justice require or allow since health care needs may vary significantly, and it may be impossible to meet all health needs. Moreover, once equal access is granted, there could be no limit to what people could claim, and this approach may soon prove itself practically and financially disastrous. To be more exact, people could start claiming the services they do not

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<sup>77</sup> Universal Health Coverage (UHC) (2021). *In*: World Health Organization. Retrieved May 1, 2021, from [https://www.who.int/news-room/fact-sheets/detail/universal-health-coverage-\(uhc\)](https://www.who.int/news-room/fact-sheets/detail/universal-health-coverage-(uhc))

<sup>78</sup> Jacobs, L. (1996). Can an Egalitarian Justify Universal Access to Health Care? *Social Theory and Practice* 22, 3: p. 315. Retrieved May 1, 2021, from <https://www.jstor.org/stable/23559054>

<sup>79</sup> Daniels, N. (2017). Justice and Access to Health Care. Zalta, E. N. (ed.) *In: The Stanford Encyclopedia of Philosophy*. Retrieved May 1, 2021, from <https://plato.stanford.edu/archives/win2017/entries/justice-healthcareaccess/>

actually need, and claim these services when they do not need them. Moreover, this may cause negative effects regarding individuals' responsible choices concerning their health.

The second possibility may be considered more hypothetical in nature because it involves the same kind of prudential calculation of human beings in terms of health care. The argument is based on a strict egalitarian assumption that we have an obligation to treat people as equals, which is best reached by giving everyone an equal share of resources in terms of income and wealth, for example. Since no one knows their individual health risks, but everyone is well informed about the best health care practices, specific interventions, and the doctors who perform the relevant procedures, everyone would make a rational choice and buy themselves insurance that covers these various health risks. Statistical analysis would be required to identify the risks prudent individuals would most likely insure themselves against, and these would be covered with universal health coverage. The main problem with this kind of approach is the strict egalitarian assumption it has in terms of wealth and income, and also the level of individual prudence and awareness it presumes, which are both very difficult to reach in reality. Also, this view neglects the various other, not so common, health care problems and needs and does not take into account different types of health care, e.g., preventive measures.<sup>80</sup> Additionally, this kind of approach may run into some problems common to utilitarianism because of the way it identifies and deals with the different health care needs that statistically require more attention than others.

The third way to argue for equal access to health care services and universal health care would be in regards to the core argument egalitarians hold in common – that all people are equal in fundamental moral worth and thus should be treated the same in some respect. Therefore it would be wrong to grant some people access to health care services, and not others, because of some reasons that are purely formal in nature and could be solved by fairly evaluating some of the differentials common to modern societies. For example, there may be several reasons people may be inconsistent regarding their work habits that usually allow them to have unlimited access to health care.

Some form of egalitarianism is probably the best approach to minimize social justice problems regarding health care. This allows the non-discriminatory treatment of all people in a specific community. However, a completely egalitarian approach may run into some practical problems because of the following reasons: it might not take into account the different health care needs and

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<sup>80</sup> *Ibid.*

preferences people have, the limited resources may not be allocated fairly within that system, and this system may not work by the principles of cost-effectiveness and fair competition. Additionally, it may neglect the treatment of some patients with rarer diseases because the grounding egalitarian principle would make it impossible to redistribute the resources based on those needs.

### 3.5 Further Obstacles in Reaching Health Equity

According to WHO, health equity is:

The absence of unfair and avoidable or remediable differences in health among population groups defined socially, economically, demographically or geographically. Pursuing health equity means striving for the highest possible standard of health for all people and giving special attention to the needs of those at greatest risk of poor health, based on social conditions.<sup>81</sup>

Furthermore, the WHO Commission on the Social Determinants of Health has concluded that the most critical factors in determining whether people will have a long and productive life, or a short and miserable one, are the conditions in which people are born into and in which they have to work and live.<sup>82</sup> According to some studies, significant health disparities are not only familiar to the third world countries, in which people have to live in great poverty, but these can also be visible in many developed high-income countries that have implemented social welfare policies, such as Norway and Sweden.<sup>83</sup> For example, some studies have been carried out in Sweden in order to find out how different groups utilize health care. The hypothesis of one of the studies was that as lower socioeconomic status can be directly associated with poorer health, then this group would also have a higher utilization rate of health care services. It turned out that health care demand could not be directly linked to the perceived need. It was concluded that circumstances beyond an individual's control could significantly limit and influence an individual's 'sphere of action' in terms of even making a rational decision to seek health care when one might need it.

Additionally, Sharon Friel states that even in a prosperous country such as Australia, the poorest 20 percent of the population can die six years younger on average than the wealthiest 20 percent

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<sup>81</sup> Social Determinants of Health (2021). *In*: World Health Organization. Retrieved May 1, 2021, from [https://www.who.int/health-topics/social-determinants-of-health#tab=tab\\_3](https://www.who.int/health-topics/social-determinants-of-health#tab=tab_3)

<sup>82</sup> Gostin, L. O. (2011). Health and Social Justice. *Bulletin of the World Health Organization* 89, 1: p. 78. Retrieved May 1, 2021, from <https://www.who.int/bulletin/volumes/89/1/10-082388/en/>

<sup>83</sup> Bradley, A. (2010). Positive Rights, Negative Rights and Health Care. *Journal of Medical Ethics* 36, 12: pp. 840-841. Retrieved May 1, 2021, from <https://www.jstor.org/stable/25764330>

of the population.<sup>84</sup> Such regularities may also be visible while observing indigenous people and their life prospects. According to The World Bank, indigenous people worldwide make up only 5 percent of the global population, yet they account for about 15 percent of the extremely poor and have on average 20 years lower life expectancy compared to the life expectancy of non-indigenous people worldwide.<sup>85</sup> As mentioned earlier, the following statement holds – the lower the socioeconomic position, the worse the health. The social determinants of health are the key factors in determining the actual health outcomes.<sup>86</sup> Additionally, people can experience discrimination in terms of access to health care services because of their race, ethnic background, gender, etc.

Moreover, there are also countries that have failed to implement adequate environmental policies. While their natural environment is near an environmental catastrophe, millions and millions of people rely on this environment daily as the primary source of their water and food supply. One such drastic example would be the Citarum river in Indonesia that has been considered the most polluted river in the world. While millions of locals depend on this river daily in terms of their survival, the chemicals and plastic disposed in this river, and other rivers, eventually reach the ocean and end up in the food chain and may therefore cause other long-term worldwide environmental and health-related problems. Of course, this can be changed by the policy choices that the governments and other relevant parties make.

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<sup>84</sup> Friel, S. (2017). Governance, Regulation, and Health Equity. – Drahos, Peter (ed.). *Regulatory Theory: Foundations and Applications*. Acton, Australia: ANU Press, p. 574. Retrieved May 1, 2021, from <https://www.jstor.org/stable/j.ctt1q1crtm.45>

<sup>85</sup> Indigenous Peoples (2021). In: The World Bank. Retrieved May 1, 2021, from <https://www.worldbank.org/en/topic/indigenouspeoples#1>

<sup>86</sup> Some longitudinal studies have been carried out concerning the social determinants of health, e.g., the Whitehall Study I and the Whitehall Study II. These studies were carried out with the purpose of determining the association between adverse psychosocial characteristics at work and risk of coronary heart disease among male and female civil servants in Great Britain. It was concluded, among other things, that the level or the grade of employment can significantly influence mortality rates. For example, men in the lowest grade (level) of employment had a three-fold higher mortality rate than men in the highest grade. Marmot, M. (2011). The Whitehall Study. In: *Unhealthy Work. The Center for Social Epidemiology*. Retrieved May 2, 2021, from <https://unhealthywork.org/classic-studies/the-whitehall-study/>

## SUMMARY

In this thesis, I discussed the various aspects that relate to justice and health care. From the perspective of health care, justice is required to guide the just distribution of resources within that particular area, and therefore some principles would have to be applied in order to achieve this end. The guiding principles used in the decision-making and priority setting in health care are the need, maximizing, and egalitarian principles. Besides these principles, many theories of justice can also provide answers on how to distribute the goods among the members of society so that it would also be justified on moral grounds. The main ideas of these theories could also be applied in health care rationing. In this thesis, I covered utilitarianism, egalitarianism, and contractarianism. My central claim is that none of these theories can deal with the varying needs and requirements in this specific area alone. All these theories have their advantages and disadvantages and would have to be applied on different levels and areas of the health care system simultaneously to achieve the best levels of health for everyone. However, some theories seem to provide a better solution to meet the requirements justice has regarding health care.

Egalitarianism is one of them. Since all egalitarians share a common understanding that people are equal in fundamental moral worth, and thus should also be treated the same way in some respect, e.g., in providing quality health care, this theory can offer the best grounding principles in terms of health care. However, not all health-related needs and preferences are created equal, and people also differ in regards to many other aspects that consequently can determine how often they might need some kind of medical help. Therefore, due to some practical considerations, an absolutely egalitarian approach may, in fact, prove itself insufficient in meeting all the health care needs fairly. Nevertheless, the egalitarian view would best justify universal health coverage, which would also significantly impact pursuing health equity.

In addition to it, some form of contractarianism may also offer a comprehensive approach to distributing the available resources in health care fairly. I discussed some of the main aspects of the theory put forward by John Rawls. Some philosophers have tried to enhance Rawls's theory of

justice so that it would also include health as a primary social good. Some have tried to find common ground with Rawls's principles of justice and see whether these principles could be helpful in terms of providing health care more fairly. Norman Daniels elaborated a theory of just health care distribution and found that health care has a significant impact on equality of opportunity, and thus the principle that guarantees equality of opportunity must underlie the distribution of health care services. However, he intentionally based his theory on a narrow definition of health to avoid any controversies that might arise. Due to the ambiguity of health-related terms, these contradictions actually do arise because the lines between health and illness, also illness and disease, for example, can often be blurry. The conditions that fall under this vague category, and may therefore be often overlooked, can also cause significant differences in equality of opportunity in society.

In terms of distributing the resources in health care fairly, utilitarianism also encounters some problems. The main issue utilitarians have to deal with is that utilitarianism is an impartial theory. It is mainly concerned with how much net utility an action creates and not how it is distributed between people. In health care, this kind of approach can actually lead to possible discrimination, e.g., in terms of how rare someone's condition is or how long and expensive the treatment might be. Additionally, utilitarians have to face the endless quality *vs.* quantity dilemmas, and the consequentialist and forward-looking nature of this theory might make it hard to commit to the causes of the past. Justice, on the other hand, also has to deal with backward-looking reasons. Nevertheless, utilitarianism is still best suitable in targeting and maximizing population health in general.

Taking all this into account, it would be plausible to claim that in order to achieve the best levels of health for everyone, some kind of plural approach would have to be applied within the health care system that would take into consideration various health and health care needs, and also the different requirements justice has in terms of health care. At the same time, it is clear that the problems of social justice cannot be solved by solely focusing on how to distribute the resources within health care institutions fairly. It is also of critical importance to address other factors on a societal level that may significantly influence people's health over the course of their lifetime – such as the social determinants of health.

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## **ABSTRACT**

In this bachelor's thesis, I focus on the problems of social justice in health care. This thesis gives an overview of the main theories and principles of distributive justice - especially highlighting the various problems and aspects relating to health care. The statement of this thesis is that none of the theories can solve the problems of justice entirely by itself because each of the theories faces some challenges. Therefore it would seem plausible to apply different theories on different levels and areas of health care simultaneously. Nevertheless, on moral grounds, some theories seem to be better aligned and more coherent with the various requirements and needs of health care and justice in general, and can better cope with the main task of the health care system – which is to protect people against the failure to enjoy the species-typical normal functioning and to guarantee the fair equality of opportunity in society. Some medical conditions can often cause the inequalities in opportunities. Additionally, levelling the issues of social justice in health care can be determined by the health-related needs and preferences, which of course vary significantly among people, and also by the formal definitions and societal norms that underlie the notions of health and disease – which can therefore also have a crucial influence in determining at which point some conditions of ill health turns out to be a dangerous disease instead. For example, in contemporary highly competitive societies, depression is a widespread condition that is often left unnoticed and untreated. Depression can also cause significant unfairness in opportunities in society as a result of cumulative stress and burnout.

Surmounting the unjustified and avoidable disparities between people is one of the primary aims of social justice, which can be critical in terms of health care. A certain moral contradiction can arise when some people in a particular society have access to health care services and others do not. This means that everyone may not be guaranteed the same equal rights to health and, consequently, even life. This problem could be best tackled by adapting the universal health care system based on citizenship, for example. However, this could prove out to be an incomplete solution that would keep people from falling into serious financial hardship because of some medical condition but would not tackle the root causes of the problem. The inequalities in health

can be directly linked to the problems of social inequalities in society in general. The World Health Organization has stated that irrespective of the country of residence, the worse the socioeconomic position of an individual, the worse the health. This regularity can even be noticed in high-income welfare countries. Hence, solving the problems of inequities in health care can instead be determined by the wise policy choices and also the level of effectiveness of these choices that the governments make.

## RESÜMEE

Käesolev bakalaureusetöö kannab pealkirja "Sotsiaalse õigluse probleemid tervishoius". See töö annab ülevaate erinevatest levinumatest jaotava õigluse teooriatest ja printsiipidest, tõstes seejuures esile tervishoiuga seonduvaid probleeme ja aspekte. Minu töö põhitees on, et ükski käsitletavatest teooriatest ei suuda lahendada õigluse probleemi tervishoius täielikult, sest iga teooriaga kaasnevad teatud raskused. Seega võiks tunduda mõistlik rakendada erinevaid teooriaid erinevates tervishoiu valdkondades ja astmetel nende koosmõjus. Siiski on mõni teooria moraalsetel kaalutlustel tervishoiu ja õigluse üldiste nõuete ja vajadustega paremini kooskõlas ning suudab paremini toime tulla tervishoiusüsteemi peamise ülesandega – tagada inimestele omane tüüpiline normaalne funktsioneerimine ja vähendada võimaluste ebavõrdsust ühiskonnas, mille võivad olla tekitanud teatud meditsiinilised konditsioonid. Samuti saab sotsiaalse õigluse tagamisel tervishoius määravaks asjaolu, et inimestel on erinevad tervisega seonduvad vajadused ja eelistused ning tervise ja haiguse puhtformaalsed definitsioonid ja ühiskondlikud arusaamad nendest võivad saada otsustavaks mõne ohtliku konditsiooni määratlemisel haigusena. Näiteks depressioon on tänapäeva konkurentsitihedas ühiskonnas vägagi levinud nähtus, mis jääb tihti vajaliku tähelepanu ja ravita. Ka see meditsiiniline konditsioon tekitab olulist võimaluste ebavõrdsust näiteks pideva kogunenud stressi ja läbipõlemise tulemusena.

Põhjendamatu ja välditava ebavõrdsuse ületamine on sotsiaalse õigluse üks peamistest eesmärkidest, mis võib tervishoiu valdkonnas osutada eriti kriitiliseks. Seda seetõttu, et mõnele inimestele teatud ühiskonnas tervishoiu teenuste võimaldamine ja teiste sellest ilma jätmine võib tekitada moraalse vastuolu, kus ei ole tagatud kõigile inimestele võrdne tervise ja elu kaitse. Selle probleemi suudaks kõige paremini lahendada mõni üldisest võrdsuspõhimõttest lähtuv lähenemine, näiteks universaalse tervishoiusüsteemi rakendamine kodakondsuse alusel. Sellegipoolest võib see olla vaid osa lahendusest, mis ei luba inimestel tervisest tulenevatel põhjustel langeda ületamatutesse majanduslikesse raskustesse, jõudmata seejuures probleemi peamise põhjuseni. Sotsiaalse õigluse probleemi lähemal lahkamisel tervishoius selgub, et ebavõrdsuse probleem tervishoius on otseselt seotud ebavõrdsusega ühiskonnas üldiselt. Maailma Tervise Organisatsioon on toonud välja

tõsiasi, et mida halvem on inimeste sotsioökonoomiline staatus, seda halvem on inimeste tervis – ning seda sõltumata asukohariigist. Sellist seaduspära võib täheldada ka kõrge sissetulekuga heaoluriikides. Sellest tulenevalt võib järeldada, et sotsiaalse ebavõrdsuse ületamine tervise valdkonnas takesub eelkõige mõistlike poliitiliste valikute ja poliitiliste otsuste efektiivsuse taha.

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