***VERSÃO ORIGINAL***

# JUST HEALTH: MEETING HEALTH NEEDS FAIRLY

*By Norman Daniels*
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In *Just Health Care*(1) (1985), Norman Daniels built a coherent theory of just health care on American philosopher John Rawls's two principles of justice as fairness. As the primary tenets of liberal egalitarianism, these two principles are the liberty principle—which requires that all individuals have the right to the same basic liberties such as political participation and freedom of speech—and the difference principle—which states that social and economic inequalities are permitted only to the extent that they promote the wellbeing of the worst-off, and that they promote fair equality of opportunity according to egalitarian principles(2). A quarter of a century later, with *Just Health: Meeting Health Needs Fairly*(3), Daniels extends the ethical foundations established in *Just Health Care,* to supplement the limited scope of principles of justice with a proposed system of fair process. Daniels replaces what he calls the "Fundamental Question"—what we owe each other in health as a

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(1) DANIELS, N. *Just Health Care* (Cambridge: Cambridge University Press, 1985).
(2) RAWLS, J. *A Theory of Justice* (Cambridge: Harvard University Press, 1971).
(3) DANIELS, N. *Just Health: Meeting Health Needs Fairly* (Cambridge: Cambridge University Press, 2008).

matter of justice—with three "Focal Questions" meant to elicit more concrete solutions to the problem of distributive justice in health care and help identify which questions remain unsolved without fair process. These questions ask: (1) Is health (and thus health care) of special moral importance?; (2) When are health inequalities unjust?; and (3) How can we meet health needs fairly given the reality of resource constraints? His answers are philosophically and empirically elegant, creating an integrated theory of justice and health that emphasizes the role of underlying social determinants of health. At the same time, these answers raise a number of questions that not only remain unsolved, but are generally problematic for his theory.

Daniels's answer to his first Focal Question is an extension of Rawls's own perspective on meeting medical needs:

> *Provision for medical care, as with primary goods generally, is to meet the needs and requirements of citizens as free and equal. Such care falls under the general means necessary to underwrite fair equality of opportunity and our capacity to take advantage of our basic rights and liberties, and thus to be normal and fully cooperating members of society over a complete life*[4] *(p. 63).*

Daniels extends this by adding that because health and opportunity are directly related, meeting health needs promotes equality of opportunity, and is therefore of special moral importance due to the validity of theories enshrining equality of opportunity. This sets the stage for his response to the second Focal Question, which teases apart when health inequalities are in fact unjust health inequities which must be addressed by society. Acknowledging the gaps left by the philosophical framework provided, Daniels's response to his third Focal Question presents a useful framework to help societies deal with what the three "unsolved rationing problems."[5] Called accountability for reasonableness, this framework invokes fair process to fill the gaps left by principles of justice due to the reality that reasonable people will disagree about the relative weight of competing claims in health. Accountability for reasonableness appears to be the answer to what Daniels used to cite as the fourth unsolved rationing problem—the democracy problem, which questions "how much weight to give the intuitive or theoretically based judgments as oppose to the expressed preferences"[6]. The deliberative process of accountability for reasonableness offers a partial solution to this

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(4) RAWLS, J. *A Theory of Justice* (Cambridge: Harvard University Press, 1971).
(5) Daniels describes these as the aggregation problem (when an aggregation of modest benefits to larger numbers of people should outweigh more significant benefits to fewer people); the priorities, or "maximin," problem (how much priority should to give to treating the sickest or most disabled patients); and the fair chances/best outcomes problem (how much should we favor producing the best outcome).
(6) DANIELS, N. "Four Unsolved Rationing Problems: A Challenge." *The Hastings Center Report* 24(1994): 27-29.

problem by invoking conditions of publicity, relevance, revisability and appeals, and regulation, for deliberative decision making that is amenable to the challenge of reasonable disagreement amongst fair-minded people.

The last two conditions of accountability for reasonableness (revision and appeals, and regulation) hinge on the first principle of justice as fairness. Because they rely on political participation and free speech, these conditions cannot exist in a vacuum without fulfillment of Rawls's liberty principle. *Just Health's* failure to address this issue is problematic as Daniels's account extends to developing countries, many of which have yet to achieve the first two principles of justice as fairness. While Daniels does not suggest that accountability for reasonableness ought to be extended to questions regarding distributive justice at the global level, he does use international examples to demonstrate its usefulness in countries with varying levels of respect for civil liberties. One example that stands out as particularly problematic is the case study on intergenerational aging in China. Daniels uses this to illustrate the need for accountability for reasonableness in filling the gaps left by his Prudential Lifespan Account. Yet in doing so, Daniels does not address the prohibitive reality of liberty in China (a country which has yet to ratify the International Convention on Civil and Political Rights), and therefore the extent to which accountability for reasonableness could actually work. Daniels's examination of the 3x5 Initiative is similarly weak in terms of illustrative power, as it concedes not only that unsolved rationing problems remain in determining global standards for national distribution of antiretrovirals, but also that fair process can be applied in the absence of—and therefore does not presuppose—principles of justice as fairness. While this claim might be cogently made, it stands to weaken Daniels's account, in which principles of justice precede fair process.

Moreover, although the four process conditions of accountability for reasonableness are characterized by nuanced pragmatism, this is not the case with the elaboration of what is necessary in fulfilling the primary requirement of "fair-minded" decision makers. Using an analogy of decision making for football rules, Daniels explains that the primary actors in the implementation of accountability for reasonableness must be people who

> *will seek reasons ("rules") they can accept as relevant to meeting health needs fairly…[that] shape a conception of the common good that is the goal of cooperation within plans, even when plans compete" (p. 118).*

The analogy is cursory: While decisions in health will inevitably affect all members of society including the decision makers—as follows from Daniels's contention that "Every (comparative) decision will make some people better off and some worse off" (126)—decisions in football rules can emerge from a more neutral perspective as they are unlikely to be made by those playing the game.

Analogy appropriateness aside, Daniels does not provide a practical framework for identifying or defining "fair-mindedness." Unnecessarily, this leaves open the possibility for a group of "reasonable" people who are in agreement, but have notion of the common good not conducive to egalitarian ideals, to pass the test. As Daniels presents the moral importance of health as being lexically prior to his account of fair process, it should follow that his conception of "fair-minded" people is closely derived from the original philosophical account. To be sure, the envisioned role these individuals play is not far from that of an individual participating in Rawls's "original position" thought experiment, which itself is lexically prior to Rawls's principles of justice as fairness, and therefore, *Just Health.* As a means of pursuing the most fair distribution of primary social goods and equality of opportunity, the "original position" posits that individuals make such decisions under a "veil of ignorance" blinding them to their own class, socioeconomic status, or talents(7). Presumably, this is the only way to guarantee fair decision making, as it results in a reasonable individual valuing an array of primary goods and opportunities that maximizes egalitarian welfare. If such a perspective is the necessary precondition for arriving at Rawls's principles of justice as fairness, and these principles provide the starting point for *Just Health,* shouldn't it follow that the "fair-minded" perspective necessary for accountability for reasonableness be amenable also to the "original position"? In the absence of this rationally fair frame of mind, the extent to which we can really trust that a stakeholder is acting "reasonably," remains unclear.

To its great strength, *Just Health* devotes an entire chapter to the relevance of priority setting in human rights, most powerfully in drawing out a more robust analysis of progressive realization. Daniels's rhetoric and nuanced examples clearly illustrate the value added by accountability for reasonableness to human rights agendas, which are too often silent on specific questions of resource allocation, especially the unsolved rationing problems. However, Daniels's focus on human rights stops short of considering instructive reflexivity—namely, whether human rights principles might also speak to the unsolved rationing problems trailing between the principles of justice and fair process. Considering the priorities problem, for instance, the human rights principles of focusing on vulnerable groups (UN CESCR General Comment 14, para. 43(a)), and directing international aid towards the most vulnerable groups (UN CESCR General Comment 14, para. 65). While Daniels is correct in explaining that giving priority to the worst-off defined as the "sickest" would inevitably lead to unsustainable inefficiencies (and therefore undermine an egalitarian approach), this is not necessarily the case if we give such priority to the worst-off defined as those individuals most vulnerable to rights violations and inequities in both underlying conditions and access to resources reinforced by the SES gradient. It is not necessarily the case that no ethical framework

(7) RAWLS, J. *A Theory of Justice* (Cambridge: Harvard University Press, 1971).

can address the question of how to determine who is worst off. Reconsidering the question of priority to the "worst-off" as one of priority to the "most vulnerable," is as informative as applying accountability for reasonableness to progressive realization. Moreover, such inequality of priority not only allowable under Rawls's difference principle, but also justified beyond questions of justice as fairness. When we give priority to the most vulnerable, it is not only because such an inequality is allowable as a matter of justice, but also because virtually universal agreement as enshrined in international human rights norms (not to mention moral psychology and other analytical paradigms) points towards a propensity to helping first those who are least able to help themselves. It is not unlikely this may follow from an intuitive rejection of the thesis that resources are permanently scarce, as suggested by Frances Kamm—the simple notion that "saving the sickest first means that there is more time to save less sick people later" (p. 277).

Commendably, Daniels ends his account with a challenge of extending the principles of *Just Health* to questions of global health. In the absence of an institutional architecture with the capacity to carry out procedural fairness according to the conditions of accountability for reasonableness, we are left with the momentous challenge of answering the Focal Questions beyond the national level. While the principles of justice as fairness allow for a robust and logical approach to health resource allocation, their presupposition creates a challenge for any theoretical extension relying on their fulfillment, as in Daniels's account of *Just Health*. Conditions throughout the world vary so greatly that any uniform process for fair distribution would inevitably (a) require conditions of democracy and (b) be incongruent in a vast majority of contexts; and *Just Health* is problematically silent on what happens to procedural fairness when preliminary conditions of justice have not been met. As strong as Daniels's account is in expanding the domain of health ethics to the population level, we may have to look elsewhere in addressing his global challenge—perhaps even to the analytic paradigms (such as human rights) written off as "where *not* to begin" in the first chapter (p. 6).

## *REFERENCES*

DANIELS, N. Four. *Just health care*. Cambridge: Cambridge University Press, 1985.

_____. Four unsolved rationing problems: a challenge. *The Hastings Center Report*, n. 24, p. 27-29, 1994.

_____. *Just health:* meeting health needs fairly. Cambridge: Cambridge University Press, 2008.

RAWLS, J. *A theory of justice.* Cambridge: Harvard University Press, 1971.