2011

Healthcare and Justice: A Moral Obligation?

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Honors Thesis In Philosophy
5/2/11

Acknowledgments

I would like to thank first and foremost Professor Derek Turner, my advisor, without whom the project would have been an utter failure. I am also grateful for the help of Professors Larry Vogel and Simon Feldman who helped my ideas take shape. Finally, thank you to my friends and family for support and inspiration throughout the process.

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On March 23, 2010 President Obama signed legislation which aims to provide insurance to the nearly 17 percent of Americans who lack coverage and overhaul the nation's healthcare system. This came on the heels of a year rife with bipartisan debate and several past presidencies which strove, though ultimately failed, to make such a provision. In the end, the bill did not receive a single Republican vote inevitably setting the stage for years of bitter disagreement and much political foot-dragging. Already the law has been subject to votes for repeal in Congress and judicial challenges around the country (NY Times, 2011).

Several problems in the United States healthcare system make reform desirable. 2010 census data indicates there are 50 million Americans without coverage and that that number is rising (MSNBC, 2010). Those who are covered apparently pay too much in exchange for too little. In terms of overall quality of healthcare the World Health Organization ranked the United States 37th in a well-known 2000 study (WHO, 2000). Though other organizations have argued that the WHO utilized a biased method of comparison this ranking nevertheless came as a shock to a nation which prides itself on being a world leader. Another study by the RAND Corporation concluded that U.S. healthcare spending as a percentage of GDP has been rising steadily for the past 40 years and, without intervention, will continue to do so into the foreseeable future. Further data from this study shows a high degree of correlation between GDP per capita and healthcare spending per capita in developed countries. In this data the United States is a clear outlier meaning it spends much more on healthcare per capita compared to GDP per capita (RAND Corporation, 2005).

The Obama administration's Patient Protection and Affordable Healthcare Act aims to expand access to healthcare while improving overall quality and reducing costs. The law offers reforms over the ways in which insurance providers historically have conducted themselves. Pre-existing conditions can no longer be used as grounds for denying coverage, rescinding coverage, or raising premiums. In addition, the law extends coverage to those who previously could not afford it. Preventive care is now free for all. Seniors and those up to 133% above the poverty level receive additional coverage from an expansion in both Medicare and Medicaid (Healthcare.gov, 2010). Those who do not qualify for either social program are benefitted through the establishment of health insurance exchanges. Such marketplaces for health insurance are available to individuals and businesses and will serve to drive down prices for coverage through competition. Federal credits will also be made available based on income for use in the exchange (House Committee on Ways and Means, 2009). If successful, the PPACA should make healthcare available to all U.S. citizens and reform certain features of the U.S. healthcare and insurance systems which seem unjust and unfair.

The question of universal healthcare is so divisive because of the complexity it involves and the far reaching effects which it promises. For many the issue rests not only on political affiliation but deeply held ideological beliefs. I have written my thesis with this animosity in mind. At the same time it has been my goal from the start to look at the healthcare debate from a fresh angle. Instead of focusing on the political discourse I have taken an approach seated in ethics and political philosophy. My central task is to discover what relationship exists between

universal healthcare and justice. It is only after finding some appropriate account of justice that the U.S. healthcare reform can be evaluated from an ethical standpoint.

In order to answer this question I delve into the work of contemporary political philosopher John Rawls. His book *A Theory of Justice* is the preeminent voice in the current conversation on justice. From here I have borrowed Rawls' justice as fairness account, in which he imagines a hypothetical situation similar to the state of nature. These individuals in the original position exist behind what he calls the veil of ignorance; they have no knowledge of what their endowments, social status, or idea of the good will be in reality. Any guiding principles of justice which they agree to in this situation are thereby just. Utilizing his conception of justice I explore what status universal healthcare should have. As it seems individuals in the original position would assent to principles of justice that guarantee access to healthcare I conclude that universal healthcare is necessary for justice. Therefore as a society we are morally obligated to provide universal access to healthcare.

Martha Nussbaum offers an alternative conception of justice which I also consider. The capabilities approach is founded on the idea that there are certain inalienable facets of human life that everyone should have access to. Some examples include living a life of normal length, bodily integrity, and the choice to participate in the various facets of society. It seems that justice is violated when one is denied access to any of these capabilities. Lack of healthcare seems to prevent the normal human functioning necessary for many of these experiences and therefore universal healthcare is necessary for justice. While I find this approach to have merit it is also

problematic. I raise several objections for the capabilities approach and affirm that Justice as fairness is the better choice.

I defend my chosen account of justice against a series of objections. One problem which I explore is the distinction between therapy and enhancement. No coherent system of healthcare can exist which does not delineate these two categories of care. Traditionally we might think of dialysis as being an example of therapy and associate enhancement with something like cosmetic surgery. It seems from the perspective of the original position that therapy would be covered under universal healthcare and enhancement would not. The line, however, becomes blurred as problem cases are examined. I discuss various definitions of health and disease in an effort to make the distinction clearer. In the end I attempt to offer some pragmatic directions on this issue though I also point out that this problem is not specific to my project and that any examination of healthcare will face similar difficulties.

Robert Nozick's work of libertarian political philosophy *Anarchy, State, and Utopia* offers the most difficult objections to my view. The second section of his book serves as a direct answer to the work of John Rawls. While Rawls argues for distributive justice, Nozick counters that the minimalist state is the largest which can be justified. To this end Nozick offers arguments both against a distributive state, the famous Wilt Chamberlain example, and against Rawls' critical principle of justice, the difference principle. While Nozick raises many additional objections I have attempted here to answer those which are most damaging to my particular thesis.

The final section is an exploration of the various healthcare systems in use around the world. I attempt to broadly categorize these systems and look at those which have had the greatest success. Consideration is also given to which, if any, systems are favored by justice as fairness.

In the conclusion I revisit the Patient Protection and Affordable Healthcare Act. Armed with Rawls' account of justice I evaluate whether or not the Obama administration's reform efforts are sufficient. As I have determined that a certain level of access to healthcare for all is necessary for justice, the law must make this provision or we must accept that United States society remains unjust.

Chapter 1: Rawls' Account of Justice

1.1: Justice as Fairness

Healthcare is a commodity that concerns and affects all people. It can be observed that access to healthcare differs the world over. Some societies require that it be available to all while in others it is only accessible to those who can afford it. Nearly all societies strive for justice. The achievement of a just society is one of the highest human goals. As a whole we strive to act in an ethical manner whenever possible. Whether healthcare is necessary for a society to be considered just is an open question. It can only be answered in the framework of some coherent account of justice.

A widely supported conception of justice is given by John Rawls in *A Theory of Justice*. I will use this as a starting point from which I will argue that universal access to healthcare is necessary for justice. It follows that all societies have a moral obligation to provide healthcare. All people have an interest in achieving and maintaining good health. Everyone has a personal conception of the good life and strives to achieve it. Healthcare helps maintain the level of human function which is necessary in this pursuit. Though healthcare is extremely valuable it can be cost prohibitive for some. Following the Rawlsian tradition I will argue that individuals unaware of their own situation in reality would assent to guiding principles that require universal access to healthcare

Justice as fairness is the conception of justice presented by John Rawls in *A Theory of Justice*. His account follows the contractarian tradition of Locke, Rousseau, and Kant with one major difference: the focus of Rawls' project is not a contract for

some particular government but the principles of justice that underlie a just society. Rawls offers justice as fairness as an alternative to utilitarianism, the dominant theory of right action. He finds such an account susceptible to strong objections and proposes justice as fairness as an alternative (Rawls, xviii).

By choosing to come together as a society certain social benefits become available which otherwise would not exist. Principles of justice determine the division of social benefits and assign basic rights and duties (Rawls, 10). They are necessarily fair when chosen in the original position, a hypothetical situation prior to social cooperation. Individuals in the original position are behind what Rawls calls the veil of ignorance; they have no knowledge of what social status, distribution of natural assets and abilities, and conception of the good they will have in reality. This is in order to prevent anyone from attempting to tailor principles of justice to his or her own benefit. By choosing behind the veil of ignorance individuals must consider what principles of justice they would want regardless of how well they are endowed in reality (Rawls, 11). Rawls assumes they are free, rational, and mutually disinterested in one another. As a result each individual will attempt to craft principles which give him or herself the greatest personal share of social benefits. The original position is of course a purely hypothetical situation and not meant to represent any historical event. However, Rawls' approach gives us a mechanism by which to determine whether a given society is just. If the society is built upon principles of justice which its members would assent to in the original position then it is just. If they would choose differently in the original position the principles of justice are unfair and the society is unjust (Rawls, 12). In *A Theory of*

Justice Rawls proposes two principles which he believes free and rational people in the original position would accept, the principle of equality and the difference principle.

In the original position, individuals would not be inclined to choose a principle of utility such that society is arranged, "to achieve the greatest net balance of satisfaction summed over all individuals belonging to it" (Rawls, 20). The consequence of such an arrangement is that some have less so that others may have more. Those in the original position see themselves as equals. Agreeing to a principle of justice which aims to maximize the net sum of happiness would be unlikely for individuals who hold this belief. In addition, each person in Rawls' hypothetical situation is rational and self-interested. They will assent only to principles which protect their capacity to advance their conception of the good. One would not expect them to waive their own interests in order to achieve the greatest net satisfaction (Rawls, 13).

Rawls proposes two radically different principles of justice, the principle of equality and the difference principle. The first requires equality in the assignment of rights and duties for all people. The second, the difference principle, breaks into two basic parts. The first holds that social and economic inequalities are just only when they result in compensating benefits for all and especially for those members of society who are least advantaged. One may notice that this principle is directly opposed to the principle of utility as it strictly prohibits some from having less so that others may have more. However, it is not unjust that some distinguish themselves in the social and economic realms so long as the situation of those less

advantaged is improved (Rawls, 13). The second part of Rawls' difference principle is often referred to as the principle of fair equality of opportunity. It states, "Social and economic inequalities are to be arranged so that they are…attached to offices and positions open to all under conditions of fair equality of opportunity" (Rawls, 72). There is nothing unfair about some jobs providing better compensation than others so long as they are open to all people of equal natural ability and the inequality in payment is to everyone's benefit. Rawls' adoption of the difference principle is based on the intuitive idea that the benefits of social cooperation depend upon the participation of all people, including those who are less well endowed. Therefore, a principle which proposes cooperation on fair terms such as the difference principle is necessary (Rawls, 13).

1.2: Universal Healthcare and the Original Position

If one accepts Rawls' conception of justice a moral obligation to provide universal healthcare necessarily follows. Any society which does not make such a provision is unjust. In order to support this claim I will argue that individuals in the original position would assent to various principles of justice which require universal access to healthcare.

Individuals in the original position are situated behind the veil of ignorance. This hypothetical arrangement prevents them from knowing their actual state of affairs in reality as determined by the natural and social lotteries. Some are well endowed while others, poorly endowed, are destined to suffer. None can be said to deserve their allotment; the outcomes of the natural and social lotteries are neutral

with respect to justice. The situation which one is born into is the result of these lotteries.

Both health and wealth are relevant to the topic of healthcare and the two are often interconnected. I take wealth to include monetary resources available to an individual in some capacity, generally through familial relationships. Wealth can be deployed in an effort to achieve good health through preventive, therapeutic, and palliative care. Health is the outcome of one's inherited genetic makeup, novel genetic mutations, and the external situation one is born into. Some are born with favorable genetics into wealth and a good environment. Their continuing health is not ensured but they rest easier knowing that any necessary healthcare can be provided for. Some are born less fortunate, unhealthy but with the necessary resources to afford treatment. Though they are more likely to need healthcare in order to maintain good health they can at least buy the necessary care. Those born into limited wealth are less likely to maintain good health no matter what situation they are born into. Most people, regardless of genetics and external factors, need healthcare at some point in their lives. Without access to treatment their good health cannot be ensured.

Good health is fundamental in most conceptions of the good life. Health allows one to live a life that coincides with a normal human life span. However, this is not the only reason why health is important. Good health is generally necessary in order to participate in activities and be the subject of experiences. As Norman Daniels argues it is not the notion that good health is important for happiness that makes healthcare a special need but the importance of good health in opportunity

(Daniels, 387). A lack of health limits one's function precluding the activities and experiences which are vital to the human experience. Healthcare is the best means by which to correct and prevent ill health. Though our treatments are not perfect in restoring health they are often effective in bringing back some degree of function, if only temporarily. Healthcare includes three categories of medical intervention: preventive, therapeutic, and palliative. None of the three is essential for all people; there are certainly individuals who never receive any sort of treatment and are of good health for the length of a normal human lifespan. Most, however, will experience all types of care to some extent. Preventive care can be as simple as education in healthful living, therapeutic care could just be setting a broken bone, and palliative care includes the administration of painkillers as basic as aspirin. Additionally, each category can be extended to include the most advanced procedures available. Most individuals will experience the need for a level of care between these two extremes dependent upon their allotment in the natural lottery. As a consequence of the social lottery, however, they may not be able to afford the necessary healthcare.

1.3: The Indirect Approach

Rational and self-concerned individuals in the original position would choose principles of justice which ensure a right to healthcare. Behind the veil of ignorance they have no knowledge of their actual situation but assent to principles of justice which should provide the greatest share of social benefits regardless of their real endowments. Given the importance of healthcare and the possibility of not being

able to afford it I believe individuals in the original position would assent to principles of justice which necessitate this provision. The first part of Rawls' difference principle necessitates universal healthcare and would be chosen in the original position. I refer to this strategy as the indirect approach. It is so named because it involves individuals in the original position assenting to a principle of justice that does not specifically call for universal healthcare but has it as a consequence when applied. By agreeing to a broad principle of justice such as the difference principle those in the original position are implicitly assenting to the multiple specific principles which result, one of which is universal healthcare.

Individuals who in reality are best endowed will use their natural talents to flourish. Others, being less advantaged, will not have the same degree of success. As some prosper and others struggle social and economic inequality results. The first part of the difference principle holds that such disparity is morally permissible provided it results in compensating benefits for all members of society, especially those who are least advantaged. Social cooperation requires the participation of everyone, the advantaged and disadvantaged alike. Without those who are worse off in reality those with useful talents would not have the chance to flourish within the construct of social cooperation. The better advantaged provide compensating benefits to those who are less well situated in order to attract their participation.

Advantaged persons in the framework of social cooperation should have little difficulty securing healthcare for themselves. If not born into wealth they could at least parlay their talents into the funds necessary for care. Individuals poorly endowed in reality, however, have little hope of obtaining healthcare. Blinded by the

veil of ignorance those in the original position would assent to principles of justice which ensure access to healthcare in the event that they are in actuality poorly endowed. The difference principle provides the means to make this provision as it sets aside compensating benefits for these individuals. One could imagine this coming in the form of taxes levied against those who have used their talents to create exceptional personal wealth. Their opportunity to succeed is partially dependent upon the less well off and therefore they must offer compensation. Individuals in the original position would agree to a stipulation that compensating benefits are put towards healthcare.

It seems a society could exist that conforms to the difference principle but does not have universal healthcare. Compensating benefits could be redistributed to less advantaged citizens and they could use them for healthcare or however they saw fit. This would not violate the difference principle yet universal healthcare would not arise. Though this seems plausible it is not what rational people in the original position would choose. Knowing the value of health and not knowing what their actual situation would be like they would agree to the stipulation that a sufficient portion of their compensating benefits be put towards healthcare. Though this limits their freedom it guarantees that their health will be provided for no matter what. Behind the veil of ignorance no one knows what sort of rationality he or she will actually exhibit in reality. The stipulation for healthcare hedges against contingencies in which the individual is influenced to use his or her compensating benefits inappropriately. For instance one could be heavily addicted to a costly and deleterious practice such as drug use or gambling. In such a situation the individual

would sacrifice health in order to placate addiction. In another case one could be mentally disabled and as a result be unable to make the decision for care to alleviate suffering. Rational individuals in the original position would choose for their compensating benefits to fund universal healthcare for the fear that they may lack this good sense later.

1.4: Daniels' Argument for Universal Healthcare

The standard by which any account of justice in healthcare is measured is Norman Daniels' *Justice, Health, and Healthcare*. In his classic essay Daniels adopts an indirect approach similar to my own arguing from Rawls' justice as fairness. He begins by outlining three central questions which any account should answer: why is healthcare special, when are inequalities in health unjust, and how can we meet healthcare needs under resource constraints (Daniels, 386)? I will mainly focus on Daniels' response to questions one and two.

Daniels finds the force of healthcare in protecting opportunity. Healthcare helps safeguard normal human functioning allowing individuals to participate in political, social, and economic life in their society. Each individual has a personal view of the good life which includes a certain range of function reasonable for their given society. Healthcare, as well as other social welfare programs, allows for them to live according to this plan (Daniels, 387). My view matches Daniels' in this regard. We both see the necessity of good health in opportunity. As I have argued, healthcare is the means by which good health is achieved and thus it is of central

importance in protecting opportunity. Daniels' view and my own share additional pieces in common but differ in important ways.

According to Daniels, socioeconomic situation and health are inextricably linked. He provides empirical evidence to support his claim that, "inequality is strongly associated with population mortality and life expectancy across nations…wealthier countries with more equal income distributions, such as Sweden and Japan, have higher life expectancies" (Daniels, 389). Inequality in all forms, not just access to healthcare, correlates with poorer health. The best way to improve health then is to limit inequality in a given society. In order to do so Daniels appeals to the second part of Rawls' difference principle. The principle of fair equality of opportunity holds that positions and offices should be open to all and awarded on merit. Wrapped in this proposition is the notion that all should have an equal opportunity to acquire the skills upon which merit is based (Rawls, 72). This flattens the socioeconomic gradient in two respects: it assures equal basic liberties such as access to public education, childcare, and healthcare and it only permits inequalities in income when the inequalities work to advance the position of the least advantaged (Daniels, 390).

Norman Daniels and I both utilize the difference principle in our indirect approaches to universal healthcare. While I appeal to the first part he utilizes the second which is often referred to as the principle of fair equality of opportunity. Daniels settles on this approach though I will not. Instead of choosing to route my argument through the difference principle, an arrangement which is fundamentally

indirect, I will argue the merits of a direct approach over my proposed indirect approach and Daniels'.

1. 5 The Direct Approach

The difference principle, in conjunction with the justice as fairness, necessitates the provision of universal healthcare. Those in Rawls' original position would assent to this principle of justice as a hedge against being poorly endowed in reality. However, this is not the only principle of justice which would be reasonable for one to accept in the original position. Here I will present the direct approach as an alternative to the indirect approaches which both Norman Daniels and I have previously argued for.

Those in the original position would find the direct approach to universal healthcare appealing for familiar reasons. They would value health and wish to live in a society which provides healthcare as their situation in reality may be unfortunate. The direct approach is similar to the indirect approach in that it leads to the provision of universal healthcare from a principle of justice agreed upon in the original position. The major difference is the selection of a single, narrow principle of justice rather than one which is broader such as the difference principle. By selecting the difference principle those in the original position agree to calling just whatever follows from it. Daniels and I have both argued that universal healthcare, among other social programs, comes about in this way. The direct approach is more specific. Given the situation of these individuals they would agree to a principle of universal healthcare in the same way that they would agree to the

difference principle. They may assent to other specific principles of justice like a principle of public education or principle of subsidized nourishment though these social programs would obviously not be covered under the principle of universal healthcare.

A principle of universal healthcare would require the provision of healthcare in a manner identical to the difference principle. The way to discover what such a principle would entail is to imagine what sort of system of universal healthcare rational individuals would assent to behind the veil of ignorance. The amount and types of care necessary for justice are whatever those in the original position would assent to. It seems reasonable to assume that such a principle of justice would ensure at least minimally decent healthcare to all members of a given society at no cost to them. Deciding upon a definition for minimally decent healthcare is a project within itself and one which I will not pursue at this time. Such a definition, however, would undoubtedly draw on the idea that minimally decent health is the level of function necessary to achieve one's expected range of opportunities. Individuals in the original position would also likely choose to make provisions for preventive, therapeutic, and palliative care. With all types of care, especially that which comes at the end of one's life, it is important to have some mechanism of rationing in place. In the most general terms such a mechanism would assign the resources of healthcare based upon cost and expected outcome. These pieces make a basic system of universal healthcare set out by a principle of universal healthcare.

The extent of care necessary for justice is also context dependent. The care one can expect to receive now differs from what was available ten years ago and

what will be available ten years in the future. Healthcare is extremely technology dependent and the interventions which should be available to all people would reflect this. As the available procedures and resources change so do the associated costs. The given system of universal healthcare must constantly evolve for this reason. It is unwise then to set in stone any system of healthcare arrived at in the original position. Though many of its features will endure it must be dynamic in order to reflect the evolution of medicine. It should also be noted that any system of universal healthcare will be influenced by the society and culture in which it is put in place. A poorer society cannot be expected to provide expensive, cutting edge procedures in the way that a richer one can. This undoubtedly affects the minimum level of care necessary for justice and the mechanism of rationing in place. These stipulations would be included in the principle of universal healthcare.

One should favor the direct approach over both the indirect approach from the first part of the difference principle that I have laid out and the indirect approach from fair equality of opportunity put forth by Norman Daniels. All the given approaches lead to universal healthcare. The route which they take, however, differs. The direct approach involves those in the original position accepting a principle which ensures access to universal healthcare. Under the indirect approach individuals in the original position submit to the difference principle. This principle of justice, given what it entails, makes it unjust for the given society to omit universal access to care. Accepting the difference principle leads to the principle of universal healthcare, among other specific principles of justice. The indirect approach leads to the same place as the direct but in one extra step and with no

added advantage. By accepting the difference principle one implicitly accepts all specific principles of justice which come from it. Assuming consistency from those in the original position, the specific principles which come out of the difference principle should be identical to the specific principles that would be directly chosen. Given the nature of the two approaches, however, the direct route seems favorable. Both achieve the same end yet the indirect approach adds unnecessary complexity. In the interest of efficiency the direct approach is the better choice.

In one sense the direct approach is actually more complex than the indirect. Under the indirect approach only one principle is required in order to determine all features of the society required by justice. The direct approach instead requires many principles of justice as each is highly specific like the principle of universal healthcare. By assenting to many principles instead of just one the direct approach adds complexity. While this is true it only adds complexity in one sense and in another more important sense reduces it. The difference principle itself is extremely complex. In formulating it Rawls sought to craft a principle if justice which could give rise to all others. It is intentionally broad and vague leading to its great complexity. The principle of universal healthcare and the other like it are conversely simple. Each gives rise to one thing and the complete nature of each is immediately obvious. While assenting to many principles is more complex than accepting the difference principle each specific principle is far simpler.

From a practical standpoint the direct approach is additionally advantageous. The difference principle states that inequality is permissible so long as it raises the level of the least advantaged members of society. In addition, there may be social

and economic positions which are better than others provided they are open to all. Norman Daniels and I have argued that if one accepts the difference principle then provisions must be made in society for universal healthcare and other social welfare programs. This is so because specific principles of justice like the principle of universal healthcare come out of the difference principle. In doing abstract political philosophy it is easy to say that various social programs emerge from this principle of justice. In practice, however, it would be extremely difficult to enumerate which specific principles emerge and their distinct features. Unlike the original position healthcare is not just an abstract tool. Instead it is a real and important system which affects all people the world over. It seems reasonable that knowing this those in the original position would select the direct approach. In doing so they assent to a principle which guarantees access to healthcare. There is no room for interpretation as there is with the difference principle.

In her essay "Universal Access to Healthcare" Lesley Jacobs examines whether an egalitarian such as Daniels or myself can justify universal care. Specifically she deals with Daniels' argument for universal healthcare which she refers to as "the minimalist egalitarian strategy" (Jacobs, 333). In this approach Daniels argues for universal access to care on the grounds that it is a requirement of fair equality of opportunity. Also known as the second part of the difference principle, fair equality of opportunity was introduced by John Rawls as an alternative to formal equality of opportunity. Rawls considered the former to be an improvement on the latter in one important sense. Formal equality of opportunity holds that individuals with equal talents and motivations must have equal legal

access to advantaged social positions. Rawls recognizes that this view is incomplete without taking into account the different socioeconomic starting points which individuals come from. This uneven footing is the reason that people of similar merit do not reach the same advantaged positions even though everyone has equal legal access. Fair equality of opportunity seeks to remedy this problem as it holds that people of equal merit should have equal prospects of success regardless of socioeconomic position. To this end Rawls argues everyone must have access to a system of education that serves to minimize the effects of one's socioeconomic class on ambitions and natural talents. The desired effect is a flattening of the socioeconomic gradient.

Daniels' strategy is to extend fair equality of opportunity to healthcare. He argues that choosing fair equality of opportunity over formal equality of opportunity in addition to public education requires access to healthcare. Ill health, like socioeconomic class, is a random circumstance of birth and should not affect one's ability to realize one's merit.

Jacobs argues that Daniels' approach fails. Differences in health among individuals do not always reflect arbitrary social circumstances but arbitrary natural circumstances. Daniels differs from Rawls in his interpretation of fair equality of opportunity as he requires that it minimize both social and natural circumstances. According to Jacobs, however, this interpretation is misguided. The principle of fair equality of opportunity accepts that natural differences among people are fair. After all, it requires that people have an equal shot at developing and utilizing their natural talents and ambitions, not that

everyone have equal natural talents and ambitions. Therefore, Jacobs concludes, universal access to healthcare is not a requirement of fair equality of opportunity and the minimalist egalitarian strategy fails.

If one accepts Lesley Jacobs' objection to Daniels then his indirect approach fails to deliver universal healthcare. Her objection, however, is no problem for the direct and indirect approaches which I have argued in favor of. The direct approach is so named because it is not routed through any broader principle of justice such as the difference principle. Instead it merely holds that individuals in the original position would assent to a principle of universal healthcare. In doing so, fair equality of opportunity never comes into play and thus the direct approach escapes Jacobs' objection. My indirect approach, though routed through the difference principle, does not rely on fair equality of opportunity in the way that Daniels' does. Though it escapes this objection I still hold that the direct approach is superior as it has the advantage of simplicity.

1.6: Disability and the Good Life

The notion that good health is necessary for a good life appears problematic for my view in the case of individuals living with disability. Health seems valuable because it protects opportunity. Without good health one cannot participate in the range of opportunities that constitute one's view of the good life. Disabilities seem to preclude good health. Generally they are viewed as deviations from health because they impose limits on one's physical and mental capacity which causes worse than average functioning. It may seem implicit in my view that disabled individuals could not live good lives. Their health prevents them from participating

in certain activities and experiences which make up the range of opportunities for a normal human life. Thus, they cannot live a good life. Obviously this conclusion is false. Most if not all individuals living with a disability would say they enjoy life. My premise must be reconciled with the empirical evidence in order for the argument to go through.

Examining the idea of one's personal conception of the good life clears up this discrepancy. One's personal conception of the good life is the manner in which one would like to live. This includes the activities that one would like to participate in and the experiences one would like to have. In order for a conception to be reasonable it must fall within the confines of one's personal situation. For example, my desire to breathe underwater is not a legitimate component of my conception of the good life. So is the case with an individual confined to wheelchair wishing to walk. While those living with disability can participate in most aspects of society they are aware that their personal circumstances limit their range of opportunities, as is the case for all people. Good health is the level of function necessary to live one's personal conception of the good life. People with disabilities have different conceptions of the good life and thus different conceptions of good health.

In this chapter I have argued that by accepting John Rawls' justice as fairness account a moral obligation to provide universal access to healthcare arises. Individuals behind the veil of ignorance value their health too much to risk the ill effects of the natural and social lotteries. For this reason they would assent to a principle of justice which requires that their given society provide access to care for all. Rawls' difference principle provides two possible indirect approaches to

universal healthcare. Though both seem like legitimate choices those in the original position would ultimately assent to one specific principle of justice, the principle of universal healthcare. This principle of justice would compel certain broad constraints on the healthcare system necessary for justice. These include access to minimally decent care for all, access to preventive, therapeutic, and palliative interventions for all, and some mechanism of rationing. A system of healthcare which fits this minimal description is just.

Chapter 2: Nussbaum's Account of Justice

2.1: The Capabilities Approach

The capabilities approach is an alternative to the contractarian theory of justice presented by Rawls. In *Frontiers of Justice* Martha Nussbaum argues that her theory of justice "can take us further than social contract doctrines" while acting as an extension of a theory such as Rawls' (Nussbaum, 69). However, she also believes that her approach is superior in providing guidance for public policy, an area in which healthcare is a major concern. In essence the capabilities approach is a list of the bare minimum human entitlements which all governments should ensure. Put another way, entitlements are what all humans should be able to do and be. Enumerating the vital capabilities is accomplished from, "an overlapping consensus among people who otherwise have very different comprehensive conceptions of the good" (Nussbaum, 70). Additionally, each capability has a threshold level below which true human functioning is impossible (Nussbaum, 71). Taken from *Frontiers of Justice,* Nussbaum presents the core human capabilities as follows.

1. *Life*. Being able to live to the end of a human life of normal length; not dying prematurely, or before one's life is so reduced as to be not worth living.

2. *Bodily Health*. Being able to have good health, including reproductive health; to be adequately nourished; to have adequate shelter

3. *Bodily Integrity*. Being able to move freely from place to place; to be secure against violent assault, including sexual assault and domestic violence; having opportunities for sexual satisfaction and choice in matters of reproduction.

4. *Senses, Imagination, and Thought*. Being able to use the senses, to imagine, think, and reason – and to do these things in a "truly human" way, a way informed and cultivated by an adequate education, including, but by no means limited to, literacy and basic mathematical and scientific training. Being able to use imagination and thought in connection and experiencing and producing works and events of one's

own choice, religious, literary, musical, and so forth. Being able to use one's mind in ways protected by guarantees of freedom of expression with respect to both political and artistic speech, and freedom or religious exercise. Being able to have pleasurable experiences and to avoid nonbeneficial pain.

5. *Emotions*. Being able to have attachments to things and people outside ourselves; to love those who love and care for us, to grieve at their absence; in general, to love, to grieve, to experience longing, gratitude, and justified anger. Not having one's emotional development blighted by fear and anxiety. (Supporting this capability means supporting forms of human association that can be shown to be crucial in their development).

6. *Practical Reason*. Being able to form a conception of the good and to engage in critical reflection about the planning of one's life. (This entails protection for the liberty of conscience and religious observance.)

7. *Affiliation*.

A. Being able to live with and toward others, to recognize and show concern for other human beings, to engage in various forms of social interaction; to be able to imagine the situation of another. (Protecting this capability means protecting institutions that constitute and nourish such forms of affiliation, and also protecting the freedom of assembly and political speech.)

B. Having the social bases of self-respect and nonhumiliation; being able to be treated as a dignified being whose worth is equal to that of others. This entails provisions of nondiscrimination on the basis of race, sex, sexual orientation, ethnicity, caste, religion, national origin.

8. *Other Species*. Being able to live with concern for and in relation to animals, plants, and the world of nature.

9. *Play*. Being able to laugh, to play, to enjoy recreational activities.

10. *Control Over One's Environment*.

A. *Political*. Being able to participate effectively in political choices that govern one's life; having the right of political participation, protections of free speech and association.

B. *Material*. Being able to hold property (both land and movable goods), and having property rights on an equal basis with others; having the right to seek employment on an equal basis with others; having the freedom from unwarranted search and seizure. In work, being able to work as a human being, exercising practical reason and entering into meaningful relationships of mutual recognition with other workers (Nussbaum, 78-80).

Her account is based upon what she calls the intuitive idea of a life worthy of human dignity. The list of central human capabilities, she finds, is implicit in the notion of human dignity (Nussbaum, 70). Such a notion is what requires each capability to be present in at least a threshold level. In order to flesh out her concept of human dignity Nussbaum borrows from the Marxian idea of true human functioning. He stresses the need for human beings to take part in "a totality of human life activities". We must have the opportunity for a wide variety of activities and experiences, not merely receive quantities of resources (Nussbaum, 74). Nussbaum's ten capabilities include all human activities which are essential in Marx's view. A just society ensures these capabilities for all its members.

2.2: The Capabilities Approach to Universal Healthcare

Universal healthcare seems to be an inevitable consequence of Nussbaum's capabilities approach. Like Rawls, it seems she would agree that such a provision is necessary in order for a society to be just. In *Frontiers of Justice* she puts forth the argument that a society is at least minimally just if all its members live lives worthy of human dignity. From her intuitive idea of human dignity and the Marxian conception of true human functioning she argues the necessity of ten central human capabilities. If any of these opportunities for activities and experiences is below a threshold level then human dignity is not achieved and the society is not just. Therefore, a just society will ensure these capabilities to at least the minimum level. How each society attains this level of functioning for all people is up to its own discretion. In the case of certain capabilities, however, the approach should be more

clear cut. Healthcare should play a substantial role in at least capabilities one and two, *Life* and *Bodily Health*, and be necessary in some capacity for many others. It seems inconceivable that a society could achieve threshold levels for capabilities three (*Bodily Integrity*), four (*Senses, Imagination, and Thought*), five (*Emotions*), six (*Practical Reason*), eight (*Other Species),* nine (*Play*), and ten (*Control Over One's Environment*) without the availability of healthcare. Of course, healthcare is not within reach for all members of some societies including the United States. Its cost can be prohibitive causing some individuals to forgo medical treatment in all but the most essential cases. In such a society threshold levels for many capabilities will not be within reach for some people and their lives will not be worthy of human dignity. By Nussbaum's account a society like the United States would not be at least minimally just. In order to be just such a state would need to provide universal healthcare.

Ensuring many of Nussbaum's core human capabilities to a threshold level requires the provision of universal healthcare. Without healthcare a minimum amount of functioning will not be attained for all but the luckiest individuals. Those who fall into the majority group and cannot afford adequate healthcare have no hope of achieving threshold levels of the core human capabilities. It is obvious that healthcare is vital to protecting capabilities such as *Life* and *Bodily Health* though its necessity for other capabilities may be less apparent. *Bodily Integrity* requires that the individual may freely move from place to place. Many treatable medical conditions prevent this freedom. Infections are usually treatable by standard medical procedures. Without treatment, however, infection can leave one bedridden

and incapacitated. *Senses, Imagination, and Thought* are also part of one's overall health. Mental disorders as well as a wide variety of illnesses and injuries, left untreated, can damage these faculties and limit one's ability to use and enjoy them. The *Emotions* can be similarly affected. Uncertainty and pain due to inadequate medical care can cause this capability to be unsatisfactorily provided for. Such a situation can cause "one's emotional development [to be] blighted by fear and anxiety" (Nussbaum, 77). A lack of care for mental and physical illnesses precludes any hope for exercising a minimum level of *Practical Reason*. Finally, lack of healthcare prevents full enjoyment of *Other Species*, *Play*, and *Political Participation*. While universal healthcare is most evidently necessary for *Life* and *Bodily Health* its absence prevents the attainment of a threshold level for almost every one of Nussbaum's ten core human capabilities. Healthcare is essential to justice under the capabilities approach. Ultimately, Martha Nussbaum's conception of justice provides a weaker impetus for universal healthcare than Rawls' approach, justice as fairness. While the capabilities approach makes a good case it is incomplete in some respects.

2.3: Objections to the Capabilities Approach

No argument should be needed to convince the reader that a just society is better than an unjust one. Accounts of justice are useful because they provide a blueprint for how to achieve this essential end. Insofar as this is true, a conception of justice which does not provide an attainable end is not useful. If the capabilities approach necessitates universal healthcare then absolute justice will never be achieved.

Nussbaum's approach requires that each of the ten core human capabilities are provided for to at least a threshold level. For some capabilities this level will be difficult to define. For others, especially those which most require universal healthcare, this level is more obvious. The threshold for *Life*, as Nussbaum describes it is, "Being able to live to the end of a human life of normal length; not dying prematurely" (Nussbaum, 76). The minimum necessary for *Bodily Health* is similarly obvious, "Being able to have good health" (Nussbaum, 76). While good health must be defined it seems possible to reach a consensus of its meaning for each culture or society. The problem this raises for the capabilities approach comes from the fact that medicine is inherently imperfect. Some unlucky individuals will never truly achieve *Life* or *Bodily Health* in the Nussbaumian sense. Examples should be obvious. Consider an infant born with Tay-Sachs disease, a genetic disorder which generally causes death by the age of four, has no known cure or treatment, and significantly reduces quality of life. Under the capabilities approach such an infant will never experience the threshold levels for *Life* or *Bodily Health*. A society which cannot treat Tay-Sachs disease or the many other illnesses which may significantly harm infants and children is therefore unjust. It seems reasonable to accept that the capabilities approach necessitates the provision of universal healthcare. If this is the case, however, justice for all is fundamentally unachievable.

Another significant problem for the capabilities approach arises if it is used to justify universal healthcare. Worldwide, nations which provide healthcare generally cover costs associated with abortion. This precedent is problematic for the capabilities approach. Initially, this procedure seems to clearly violate Nussbaum's

first capability, *Life*. Actually, the problem is much deeper. While capability one forbids abortion capability three seems to endorse it. Nussbaum's describes *Bodily Integrity* as including, "choice in matters of reproduction" (Nussbaum, 76). Abortion seems to be a straight forward matter of reproduction. The status of abortion with respect to justice is ambiguous under the capabilities approach. It serves to show that capabilities one and three can be in direct contention in certain cases. In order to keep a consistent conception of justice a society which wishes to use the capabilities approach as justification for universal healthcare could refuse to cover abortion. This is at odds with the provisions made by most societies. Women who would get abortions if not for lack of financial means will bring children into the world which they cannot provide for.

There are problems associated with both the Rawlsian and Nussbaumian conceptions of justice. Those that befall the capabilities approach, however, seem to preclude its usefulness as a conception of justice which can be associated with universal healthcare. Rawls' justice as fairness account holds up better for this purpose and therefore I rest the weight of my moral claim with it. Having settled upon a conception of justice I now present a series of objections which it must overcome. The first is the therapy-enhancement distinction.

Chapter 3: Making the Therapy-Enhancement Distinction

3.1: Defining Therapy and Enhancement

So far I have categorized all medical interventions as falling into three distinct groups: preventive, therapeutic, and palliative. These procedures, however, can be classified in two other meaningful groups: therapy and enhancement. It can be rightfully said that medical care falling under the heading of therapy is necessary for good health while the same is not true for enhancement. An obvious example is breast augmentation versus mastectomy. The first surgery is generally considered enhancement because it has no medical value to the patient. Instead it is performed optionally with the end goal of improving the subject's appearance. Removal of breast tissue, mastectomy, is undergone for the purpose of improving one's health. It is a therapy utilized in cases such as breast cancer where allowing the tissue to remain would prove harmful to the patient. Given a reasonable outlook for survival any rational person would choose the procedure necessary. Whether one seeks out and assents to enhancement, however, is much more subjective.

3.2: Therapy Vs. Enhancement In a Rawlsian Society

Any society which provides universal access to healthcare must confront the therapy-enhancement distinction and the issues that surround it. Such a society must decide to what extent universal care is provided for its citizens. Would individuals in the original position want access to plastic surgery or merely the interventions necessary to stay alive? I believe those in Rawls' hypothetical

situation would choose only the latter, recognizing the pitfalls of providing universal access to enhancements.

Healthcare must be rationed because it consists of scarce resources. Doctors are highly specialized professionals who require extensive training and are compensated proportionally. Few members of society have the skill set and dedication to reach this level and thus those that do are in great demand. Other medical personnel such as nurses, physicians assistants, and paramedics are skilled and similarly in demand but have not reached the same pinnacle of expertise. Medical resources are also hard to come by. This includes facilities like hospitals and outpatient care as well as the tools of the trade: specialized instruments, donor blood, and the like. For the most part what sets these limits is money. Healthcare is undoubtedly important though only a certain proportion of cash can be allocated in this way whether it comes from public or private funds. No individual or society can be expected to assign the totality of its monetary resources to healthcare. Thus, those in the original position must make a choice. It seems all rational individuals in the original position would assent to principles of justice which provide universal access to therapy as they value good health. It is less likely, however, that they would choose principles which ensure access to enhancement. Doing so serves to dilute the resources allocated to healthcare or divert resources from other important social programs. This would lower the overall level of health in order to provide access to procedures which have no effect outside of one's appearance. Rational individuals behind the veil of ignorance would not choose to provide opportunities for enhancement and instead would focus on universal access to

therapy. The problem then is deciding where therapy ends and enhancement begins.

3.3: Defining Health and Disease

At its heart, the distinction between therapy and enhancement seems to rest upon the definition of disease. Breast cancer is a disease and thus mastectomy is a therapy. Breast augmentation is done by choice, not as a response to disease, and is therefore an enhancement. Making the distinction, however, is not always simple. Defining disease is notoriously tricky as problem cases and gray areas which must be contended with abound. The Oxford English Dictionary calls disease, "a condition of the body, or of some part or organ of the body, in which its functions are disturbed or deranged…a departure from a state of health, especially when caused by structural change" (OED, 441). This definition seems correct based upon the experience we all have with disease yet it is imprecise. Breast cancer certainly falls under the category of disease based upon this definition. However, the need for breast augmentation seems to as well. Consider the reason an individual would seek this procedure, hope for greater happiness coming from a newfound feeling of self-esteem. It can be debated whether such justification is reasonable though regardless it seems this is the driving factor in a patient's desire for such an operation. The individual's depression resulting from lack of self-esteem seems to fit the OED definition of disease as this is a case in which the functions of an organ, the brain, are disturbed. If when in a healthy state this organ is at least neutral with regard to emotion then depression seems to constitute a significant departure. By this

definition of disease breast augmentation could be considered therapy as it treats depression. The OED definition appears to be inadequate.

Christopher Boorse proposes disease as statistical abnormality in his essay *On the Distinction Between Disease and Illness*. This captures the spirit of the OED definition while adding a new dimension of precision. There is a state of the body and its organs that the vast majority of people experience. Deviations from this state are by comparison rare. We consider them diseases because they differ from the condition of nearly all other people. It is implicit in this idea that the state which the most people are naturally in is the correct one. Thus they are healthy and those that are different are diseased. Unfortunately, disease as a statistical abnormality seems equally problematic.

Boorse argues that statistical abnormality is neither necessary nor sufficient for disease. The Black Death, which spread through Europe during the 14th century, afflicted far more than a statistical minority. For Europeans living during this period the statistical state of health was altered. Few would be inclined to say that the bubonic plague, the purported cause of the Black Death, was not a disease as it causes significant harm to one's body. The prevalence of AIDS in Sub-Saharan Africa stands as another grim example as greater than 15% of all people who inhabit South Africa are afflicted with this condition. When a specific condition affects such a great proportion of people it no longer seems to constitute only a statistical abnormality. Like the bubonic plague it seems incorrect to not classify AIDS as a disease. A more common example which Boorse provides is tooth decay. It is a deviation from normal health yet it is something which nearly all people experience (Boorse, 50). If

this general feeling is upheld in both cases then statistical abnormality is not necessary for disease. Additionally, such a condition does not seem sufficient to constitute disease. In the modern era homosexuality is not considered a disease, yet it is practiced by a statistical minority. Homosexuality does not fit the criteria by which we usually define disease such as a departure from health. It seems wrong to classify it as such merely because it is the sexual orientation for a statistical minority. Deviations from the typical human attributes such as unusual strength or eye color represent statistical abnormality. As these aberrations are not harmful and even may be beneficial it seems incorrect to classify them as disease conditions. Statistical abnormality it then not sufficient for disease (Boorse, 50). Like the OED definition this conception of disease is irreparably flawed.

As Boorse argues, it may be more useful to define disease from our notion of health. According to Boorse there are two ideas of health, theoretical health and practical health. Disease is defined as the opposite of theoretical health. Behind theoretical health is the notion of normal function in accordance with design. This is synonymous with the natural state of the being (Boorse, 58). Boorse uses the example of a car. We would say a car is in good mechanical condition if its function conforms to what it was designed for. For a given living entity the design or goal towards which it operates is determined through empirical study (Boorse, 60). For humans this goal might be reproduction and survival. A human is in good theoretical health when his or her parts function properly in pursuit of these goals. Disease is any condition which affects these systems and thereby prevents normal function

(Boorse, 58). Though this conception of disease seems initially similar to disease as statistical abnormality, it avoids the pitfalls which disrupt that view.

3.4: Problem Cases

The difficulty in defining disease makes it hard to come up with a clear cut difference between therapy and enhancement. It seems initially plausible that therapies treat disease while enhancements do not, yet I have shown that the line is easily blurred depending upon the definition of disease which one chooses to employ. This uncertainty in what constitutes a therapy versus an enhancement has far reaching consequences as the distinction is often called upon to do legal and ethical work.

Confusion results when two individuals face a similar set of circumstances which came about differently but require the same treatment. Consider two abnormally short children, one as the result of a growth hormone deficiency and the other because of a genetic predisposition towards shortness. Externally their conditions present in the same way and they will face the same disadvantages in life. The cause for one child, however, falls under the commonly accepted definition of disease while for the other it does not. Suppose that both can expect to reach the height of an average adult human if they receive a regular administration of growth hormone. While their situations are nearly identical the intervention they receive cannot be classified as such. For the child who cannot produce enough of his or her own growth hormone the administration of extra hormone is classified as a therapy. The other, whose diminutive stature is not the result of a disease condition, instead

receives enhancement. This divergence in classification is problematic for a society such as the one I have suggested. The children seem equally entitled to extra growth hormone. They have the same physical condition which will disadvantage them similarly without intervention. From an ethical standpoint society seems to have the same obligation toward both children, however, if we take therapy to constitute treatment of disease only one child must be provided with additional growth hormone. In a case such as this few would choose to deny treatment to the second child on these grounds and thus the ambiguity of the therapy-enhancement distinction creates a problem for the provision of universal access to healthcare.

Another case in which the therapy-enhancement distinction is invoked is the prescription of drugs which have a tendency for abuse. Currently marijuana is illegal in the United States. It can, however, be prescribed by a doctor for various ailments. For example it is often used for nausea associated with chemotherapy, chronic physical pain, insomnia, and glaucoma. While studies show that it can be beneficial as a treatment for a wide variety of ailments it remains illegal because of perceived negative side effects. Therefore while it can legally be used as a therapy it remains unlawful to possesses or utilize marijuana for the purpose of "getting high", an enhancement. This application of the drug is characterized as such because it provides no medical value to the user, merely pleasure. Here the distinction between therapy and enhancement is called upon to do legal work. In order to determine when and to whom marijuana may be dispensed legally some hard line must be established. Again the ambiguity of the distinction makes this difficult. Some idea of the difference between therapy and enhancement can be found though

it is weakened by the many obvious problem cases which defy classification. It does not seem we can be confident in legal and ethical decisions which are made based upon our conception of the distinction. This is highly problematic as any functioning society, even one without universal healthcare, requires that these cases be elucidated.

3.5: In Search of a Solution

Neither I nor any other person can offer a perfect solution to this problem. It is something that all who write on subjects similar to my own must struggle with and it is not my responsibility to solve it here. The ailments which afflict the human body are simply too complex to be described by some catch-all categorization. The same goes for the interventions, either therapies or enhancements, which we utilize in a medical setting. At best we have a working idea of what makes therapy distinct from enhancement that can be modified on a case to case basis. Rational individuals in the original position would undoubtedly know the danger of taking a hard line stance on what constitutes therapy versus enhancement and then agree to only provide for the former. We should not hold out hope for a perfect distinction between therapy and enhancement and instead focus on finding a practical solution which we can all live with.

Instead of squabbling over the difference between therapy and enhancement it seems that, in the interest of health, society should focus on when treatment is truly needed. There are many clear examples of disease which can pointed out such as AIDS and cancer. Obviously these are cases in which care should unconditionally be provided. Problem cases must be evaluated on an individual basis. We have a

moral obligation to provide treatment when necessary. The difficulty in this approach is deciding which cases require intervention. In the example of the two abnormally short children I argued that if one receives growth hormone then the other must as well. Though the second child's condition does not fit the common definition of disease he or she will be equally disadvantaged in life. Perhaps providing growth hormone to this child is enhancement but it still must be covered because of the moral obligation which society has. As I have pointed out there may be cases in which breast augmentation should be covered. Even in these cases it may or may not be rightfully classified as an enhancement. This label is not important. What counts is whether or not we as a society have a moral obligation to the patient. If it is determined that this individual's health, physical or psychological, has been adversely affected then the intervention must be authorized. Having answered this objection to the best of my ability I move on to the series of challenges which Robert Nozick raises for Rawls' account of justice.

Chapter 4: Objections From Nozick

4.1: Anarchy, State, and Utopia

Robert Nozick treats part two of *Anarchy, State, and Utopia* as an answer to Rawls. He argues that the minimalist state, which he proposes in part one, is the most extensive state that can be justified (Nozick, 149). Such a state has a few functions: it protects its participants against violence, theft, and fraud and enforces contracts (Nozick, 26). The state which Rawls proposes in *A Theory of Justice* is distributive. It functions to limit disparities amongst its citizens by facilitating the redistribution of naturally endowed resources. In doing so distributive justice is achieved. Nozick's claim is that any state larger than the minimalist one violates the rights of its citizens (Nozick, 149). He offers a series of objections to Rawls' proposed state and the principles of justice that govern it.

To begin, Nozick examines the situation of distributive justice. If all people are entitled to the things which they hold then the distribution is considered just (Nozick, 151). The justice of holdings is spelled out in entitlement theory which itself consists of three principles of justice in holdings. The principle of justice in acquisition specifies which unheld things may come to be held and how this may come about. The second is the principle of justice in transfer which details how something may legitimately change possession from one individual to another (Nozick, 150). In cases where someone comes to hold something by means which violate the first two principles the third is invoked. The principle of rectification of injustice dictates the penalty and reparations for such injustices (Nozick, 152). If all actions of redistribution occur in accordance with these principles and the initial

distribution is just, then the new distribution is also just. Entitlement theory differs from other distributive theories like Rawls' as it is historical in nature. To know whether the current holdings and thus the overall distribution is just one must examine how these holdings came about. Rawls' theory of justice presents the opposite, end-state principles. Nozick argues that such principles are inadequate because they do not take into account what certain individuals may have done in the past to deserve the distribution they receive (Nozick, 154). He concludes that the distributive state generated from historical principles such as those of entitlement theory is superior.

4.2: The Wilt Chamberlain Example

Distributive schemes can also be categorized as patterned and non-patterned. A patterned principle of distribution arranges distribution according to some specified natural dimensions (Nozick, 156). For example, there may be a patterned principle which requires distribution according to moral merit. In such a case those who have in the past shown the greatest moral merit receive the greatest share. Rawls' proposed distributive principles are patterned. Nozick's principles of entitlement, however, are not. No set of natural dimensions can generate the holdings which come about when people act freely yet are bound by the principles of entitlement (Nozick, 157). Nozick presents his famous Wilt Chamberlain example in order to show why patterned principles of distribution are not useful.

Imagine patterned distribution D1. Nozick allows this to be the reader's favorite distribution. It can distribute all shares equally or distribute according to some natural dimensions, whichever you prefer. Now consider Wilt Chamberlain, a

basketball superstar of Nozick's time who many people would willingly pay to see play. Chamberlain's contract dictates that 25 cents from each ticket sold goes directly to him. His popularity draws many people to watch him play and thus he is able to amass a wealth which is vastly greater than what he received under D1. This new distribution can be called D2. According to entitlement theory this distribution is also just because it was arrived at through the principles of justice in holdings (Nozick, 161). While this distribution seems to be just it violates the patterned principle which generated D1. The favored distribution is changed by people acting in legitimate and just ways. In order to preserve D1 constant redistribution is necessary. This seems both oppressive and unnecessary as Nozick shows that D2 is similarly just (Nozick, 163). According to the Wilt Chamberlain example patterned distributions inevitably fail.

In answering Nozick's famous problem a Rawlsian can simply stick to his or her guns. The patterned distribution which I have proposed requires that access to healthcare be distributed to all people; this is equivalent to D1 in Nozick's example. This is necessary because access to care can be cost prohibitive for those who are poorly endowed. Individuals in the original position for fear of having this situation in reality would agree to some patterning principle which requires the availability of healthcare to all. By assenting to such a principle they accept the redistribution which Nozick fears. Any society will contain some members who utilize their natural talents in order to gain a greater share of wealth. Nozick is correct that this is just, however, it is also just to redistribute some of their wealth in order to satisfy the principles chosen in the original position. The principle of universal healthcare

requires that this redistribution be made and thus there is no ethical problem with doing so. For a Libertarian philosopher like Nozick the redistribution of wealth is unappealing, however, if one accepts the Rawlsian system then the Wilt Chamberlain example is no problem at all.

4.3: Nozick's Attack On the Difference Principle

The incentive to participate in social cooperation is that it provides additional benefits to each individual involved. The task of assigning these benefits fairly falls on the principles of justice which rational individuals would choose in the original position. Rawls puts forth two principles of justice, equality in the assignment of rights and duties and the difference principle. The latter states that social and economic inequalities are just only if they result in additional benefits for everyone participating under social cooperation. The major implication of the difference principle is that the better endowed individuals in a just society can only flourish if in doing so they benefit the less well endowed. Social cooperation only becomes a reality if everyone, the better and less well endowed individuals, agree to participate. Rawls goes on to say that the less well endowed can only be expected to cooperate if the better endowed propose reasonable terms under which the division of advantages will occur. He believes that the difference principle satisfies this criterion and thus the less well advantaged will willingly join in (Rawls, 13).

Nozick chooses to attack the more controversial of Rawls' two principles of justice, the difference principle. He reverses Rawls' assertion and questions whether under the difference principle the less well endowed could expect the willing

cooperation of the better endowed. Nozick identifies that the situation of social cooperation is symmetrical with regard to gains. Both the less well advantaged and better advantaged gain from such an arrangement (Nozick, 192). What is puzzling, however, is that the difference principle appears to be asymmetrically biased in favor of the worse endowed. Its purpose is to provide the worse off with added advantages while giving nothing extra to those individuals who are more fortunate. Nozick questions the reason for this asymmetry suspecting the answer lies in how much each class of individuals stands to gain from social cooperation. To do so he compares the gains from narrow cooperation and general cooperation. A narrow cooperative arrangement would involve the better or worse endowed individuals cooperating amongst themselves but not across these two groups. Nozick imagines this being possible after some halt in negotiations between individuals in the original position,

> "For failing general agreement on the principles to govern how the benefits of general social cooperation are to be held, not everyone will remain in a noncooperative situation if there is some other beneficial cooperative arrangement involving some, but not all, people, whose participants *can* agree" (Nozick, 193).

For example, consider the group of better endowed individuals under the narrow cooperative arrangement. They will each enjoy social benefits which they would not living noncooperatively. The same is true for the group of less well endowed individuals. There is then some measurable social advantage to be gained from narrow cooperation. Nozick compares this to the gain from general cooperation, the

arrangement under which all individuals, naturally endowed or not, cooperate. Again an increase in benefits due to social cooperation occurs because of the larger pool of individuals. Nozick calls this measure the incremental gain from wider cooperation. This measure, however, will not be equally felt for individuals coming from the better and worse endowed narrow cooperative arrangements (Nozick, 193). The group of better endowed individuals obviously have a pool of more talented people. They have less to gain in joining the others in general cooperation because the less well endowed have little to offer to them. Thus their incremental gain from wider cooperation is smaller than it is for those coming from the narrow arrangement of less well off individuals (Nozick, 194). The better endowed are already the losers in social cooperation and under the difference principle they stand to lose even more. With this argument Nozick inverts the situation. Now it seems the better endowed are the ones positioned to demand that the less well endowed propose reasonable terms if they want their cooperation. Of course, as Nozick points out, this is an outrageous request. However, he has shown that the less well endowed's initial call for reasonable terms is just as ridiculous and should not be assented to by the better off. Thus, Rawls has not shown why the burden is on the better endowed to produce reasonable terms such as the difference principle.

4.4: In Defense of the Difference Principle

The argument which Nozick presents against the difference principle is successful thought not necessarily compelling. I grant that his objection highlights an underlying flaw in Rawls' difference principle. Rawls takes for granted that it is

the better endowed who must propose reasonable terms in order to ensure participation by all in social cooperation. As Nozick identifies, the worse endowed have at least an equal burden and given this situation it seems unlikely that the better off would agree to a principle which takes more from them. However, imagining oneself in the original position seems to take away much of the force of Nozick's objection. Suppose that the individuals in the original position are aware of Nozick's argument though not their own reality as they are behind the veil of ignorance. They know that if in reality they are worse endowed that they will at least gain somewhat from cooperating with the better endowed. This is essential to Nozick's objection. Such cooperation, however, does not guarantee that they will have access to social welfare programs like healthcare if they are in fact worse endowed and need such assistance. Health, as I have previously argued, would be seen as extremely valuable to those in the original position. Not knowing what sorts of natural endowments they have in reality these individuals would want to craft principles of justice which ensure access to healthcare, the best means of maintaining and achieving good health. The difference principle is one principle of justice which guarantees the availability of subsidized healthcare. Given the necessity of healthcare and the importance of the difference principle in achieving it it seems that a rational individual in the original position would simply bite the bullet when it comes to Nozick's objection. He or she knows that if in reality they are better endowed they will have accepted unreasonable terms in social cooperation from the worse endowed. Regardless, it seems a rational individual behind the veil

of ignorance would accept the difference principle anyway as a hedge against being worse endowed in reality.

4.5: Locke's Acquisition Theory

The principle of acquisition in holdings is one of three principles of justice fundamental to Nozick's entitlement theory, a theory of justice which he presents as an alternative to Rawls' justice as fairness account. Under entitlement theory any distribution which comes about through the principles of justice in holdings from a previous just distribution is itself just. Nozick's principles of justice are means by which property is fairly acquired, transferred, and, in the case of some wrongdoing, made reparations for. Of the three the principle of acquisition in holdings is the most problematic for the entitlement theory. The stakes are high for Nozick. Without a way to fairly acquire unowned resources there can be no just distributions. Any that arise will be unjust even when in accordance with the other principles of justice in holdings because the initial distribution is unjust. Nozick bases his principle of acquisition in holdings on Locke's theory of acquisition and subsequent proviso.

Locke's theory states that property rights originate when someone mixes his or her labor with an unowned object. This assertion seems extremely vague and Nozick appears to be in agreement as he immediately raises a series of questions for Locke. For example if an astronaut mixes labor with the soil of an unclaimed planet does he or she own the land that has been directly touched, the whole planet, the uninhabited universe, etc (Nozick, 174)? It seems the intuitive idea behind Locke's theory is that by mixing something owned (labor) with something unowned one's

ownership of the unowned item comes about. Nozick wonders why doing so would not cause the opposite, the loss of what one owns (Nozick, 175). It seems vital that Nozick answer these questions in order for his principle of acquisition and thus entitlement theory to stand. Strangely, he does not and instead proceeds to Locke's proviso.

The proviso itself is essential to show how one can be just in any original acquisition. It is best summarized by Locke; there must be "enough and as good left in common for others" (Locke, 134). If not, the acquisition is unjust as appropriation outside of the proviso makes the situation of others worse. Any acquisitions made according to the proviso are legitimate and just (Nozick, 178). Locke's proviso is problematic for a number of reasons

4.6: Objections for the Proviso

The proviso states that one may only appropriate when there is enough and as good left for others. If a number of people want to appropriate a quantity of resource then they must divide it equally to satisfy the proviso. Suppose there is some valuable natural resource which upon division by ten people provides just enough of a share to each for his or her purposes. Now imagine 1000 people all laying claim to an identical quantity of resource. By the proviso they will each get an equal share. However, in this situation dividing the resource by more than ten generates shares which are inadequate for whatever purpose the people have in mind. Therefore while the proviso leads to fair acquisition it does so in a manner which generates useless shares of resource.

Another problem for Locke's proviso is the absence of any timeframe for which it must hold. Neither he nor Nozick specify which generation or generations enough and as good apply to. Must one only worry about the people of the present or does enough and as good apply to the needs of future humans as well? Realistically, it seems impossible to gauge what the people of the future will need. If they are to be included we must stop all acquisition or risk violating the proviso (of course they will be unjust in making acquisitions as well for the same reason). If instead the proviso only applies to the people of the present then Locke and Nozick seem to make an implicit claim about the people of the future. If the people of the present do not need to ensure enough and as good for the people of the future then these future humans seem to have less of a right to the Earth and its resources for temporal reasons alone. This position being equally unattractive the proviso seems to fail when a timeframe is introduced.

The terms of the proviso are too vague for it to be useful in adjudication when people use the same resources for different things. Determining "enough" and "as good" inevitably necessitates ranking rights to acquisition by reason for acquisition. Individuals make acquisitions as a means to some end. Every end requires some amount of resources in order to be brought to completion. We can only determine what will be enough and as good by knowing what ends some resource will be used for by the appropriator. Say I want to build a table and you want to make a ream of paper. In order to do so we each must acquire enough wood to complete our projects. For example imagine a table requires ten pieces of wood while a ream of paper requires one. In order to not violate the proviso we must

leave in common enough wood for the other to complete his or her project. However, what if the initial supply of wood in common is only ten pieces? Alone, we can each acquire enough to complete our project but together one of us must violate the proviso. To be just then we must either mutually agree to scrap both projects or set about deciding which end is more valuable. It seems fruitless to argue whether a table or a ream of paper is more valuable and therefore this situation is a problem for the proviso. Vagueness is also a difficulty for the term "as good". A knotted piece of wood makes just as a good a piece of paper as a non-knotted one. In shipbuilding, however, a knotted board is not as good because it is weaker. This shows that the same thing can be "as good" or not depending upon its intended use. For this reason the proviso seems vague when it articulates only that the resources left must be "as good". Another challenge becomes apparent if one imagines two sources of wood situated in different places. Imagine one is a few steps from our shared camp and the other is only accessible by hiking through miles of swamp. If I appropriate the grove which is closer at hand and leave you the other have I violated the proviso? It seems the less accessible resource is not "as good" though the proviso makes no such distinction. When these objections are taken into account the proviso and acquisition theory seem insurmountably weak.

The critique of justice as fairness which Nozick advances begins with praise. His preface shows the deep impact of Rawls' work in the three years between the publication of *A Theory of Justice* and *Anarchy, State, and Utopia* saying, "Political philosophers now must work within Rawls' theory or explain why not" (Nozick, 183). Despite his laudatory remarks Nozick raises many strong objections to Rawls'

account of justice. He argues that such a theory of distributive justice is unjustifiable and that a historical, non-patterned theory of justice would be superior. The alternative which he proposes is entitlement theory. It states that any distribution which comes about from a previously just distribution through the principles of justice in holdings is itself just. I have attempted to deflate Nozick's account by raising doubts about the legitimacy of one of his principles of justice in holdings, the principle of acquisition in holdings. Without a principle which dictates how and when resources may be initially appropriated no just distribution can arise. Without this principle Nozick's entitlement theory ultimately fails and cannot be suggested as a legitimate alternative to Rawls' account of justice. Nozick utilizes a similar strategy attacking Rawls' key principle of justice, the difference principle. In order to defend this principle I have argued that from behind the veil of ignorance individuals would still choose the difference principle even if they had knowledge of Nozick's objection. The chance that they could be badly endowed in reality is convincing enough to accept that if they are actually better endowed they will have taken an unfair deal. The objections which Nozick raises are formidable, however, I have shown that they generally ill founded and thus not harmful to Rawls' account.

Chapter 5: Practical Policy Considerations

5.1 Universal Healthcare Around the World

In presenting my central argument from Rawls' account of justice and answering a series of objections I have dealt mainly in abstract philosophy. The focus of the final section of my thesis is on the practical applications of my argument. After all, it does no good to conclude that we have a moral obligation to provide access to healthcare if such a provision is impossible from a pragmatic standpoint. In this section I will detail the various forms which universal healthcare takes around the world. I will also explore which system, if any, is favored from the perspective of those in the original position.

Systems of universal healthcare around the world are as diverse as the societies from which they arise. The specific history, political environment, and cultural values of any given nation are inevitably reflected in the nature of its healthcare system. Data are often cited which correlates universal access to care with better health outcomes and lower costs. All systems are not created equal, however, and the statistics commonly cited can be misleading. For example, healthcare is what economists call a "normal good" meaning that greater wealth leads to greater healthcare expenditure (Tanner, 2). Additionally, measures of infant mortality and life expectancy are corrupted by the particular circumstances for any given country. Legality of abortion causes fewer babies to be born when disease is detected. War torn nations have lower life expectancies than those with relative peace (Tanner, 4). In order to appropriately compare systems of universal healthcare one must look beyond the "headline" data and to the system itself.

5.2: Three Major Healthcare Schemes

There are three major variants of universal healthcare which roughly characterize the systems found worldwide: single payer, employment based, and managed competition. A single payer system is one of the most widely cited as universal healthcare takes this form in Canada, the United Kingdom, Australia, and Taiwan. In such an arrangement the government provides healthcare to all people and collects taxes in order to do so. The government controls the supply of healthcare and pays providers directly for services rendered. Prices are set for the providers who are compensated either as salaried government employees or through reimbursement. The total amount and quality of care distributed is indirectly determined by whatever budget is set by the government. Depending upon the nation additional private insurance may be available though in the strictest single payer systems opting out is impossible.

Germany stands as the model for employment based systems of universal healthcare. Under this arrangement employers are required to provide healthcare to their employees. This is done through the formation of insurance or "sickness" funds either within or across a given industry. The value and nature of premiums and benefits are often set by the government. Premiums are taken out as a sort of payroll tax which goes directly to the fund.

The final type of universal healthcare is managed competition. This system can be seen in Switzerland, Massachusetts, the Netherlands, France, and to some extent in many other nations. Healthcare which comes in this form tends to vary from country to country though some defining traits are characteristic. In all cases

managed competition means universal healthcare which is provided privately in a heavily government controlled marketplace. This is paired with a government mandate for all to buy insurance and for employers to provide insurance to all employees. It is left up to the individual to choose healthcare providers and insurers. The standard benefits package is set by the government though insurers are allowed to compete on price and additional benefits. While these are the standard characteristics of managed competition many variations exist. In order to control costs and stave off overutilization France and Japan impose significant cost sharing. In other nations strict limits are set on how much consumers must pay out of pocket. In some countries it is forbidden to purchase additional or private insurance while in others this practice is common. Not surprisingly outcomes vary with some nations marked by cost and low access and others which manage to contain expenditures and keep lines short (Tanner, 7).

In his study of the global systems of universal healthcare *The Grass Is Not Always Greener: A Look At National Healthcare Systems Around the World* Michael Tanner explores the pros and cons of various systems by nation. He notices that single payer systems, the most highly touted form of universal healthcare, are generally problematic. Nations which utilize this arrangement face rising costs, rationing of care, a lack of modern medical technology, and poor health outcomes. Instead, he concludes, that any system succeeds only to the degree which it incorporates various market mechanisms. These include competition, cost sharing, market prices, consumer choice. The most successful systems also tend to eschew centralized government control (Tanner, 1).

5.3: Does Justice as Fairness Favor One System Over Another?

The Patient Protection and Affordable Care Act signed into law by Barack Obama draws in part from all three major systems. Its most important feature, insurance exchanges, are clearly a form of managed competition. Through insurance exchanges and small business health insurance tax credits businesses that wish to do so are able to provide healthcare for their employees. This feature is reminiscent of employment based systems though there is no government mandate requiring such a provision. Medicare and Medicaid are both examples of single payer systems. They are essentially insurance providers set up and funded by the government. A proposed "public option", a heavily subsidized insurance plan that would be available in insurance exchanges, serves as a third example. The PPACA seems to incorporate features used in healthcare systems around the world. Most important, however, is whether or not it fulfills the conception of justice which I have laid out.

In determining whether or not the healthcare reform to the United States is just it is useful to first explore what sort of system may be favored by Rawls' account of justice. I have argued that individuals in the original position would be hard pressed to nail down an enduring system of healthcare from behind the veil of ignorance. The system which best fits a given society is determined by many factors including history, wealth, resources, population, and cultural values. By the nature of the veil of ignorance the specifics of the society cannot be known and thus no one system can be favored. Though the specifics elude them there are a few things which it seems the participants can universally agree upon. The system must provide at least an adequate level of care to all members of society regardless of their

individual situations. Preventive, therapeutic, and palliative care should all be available based upon some system of rationing which takes into account the given characteristics and resources of the society. Some distinction between therapy and enhancement must be made to assist in determining which medical interventions are necessary and should be covered and which are superfluous and must be paid for out of pocket. These are the essentials which individuals situated behind the veil of ignorance would likely agree to.

Given the essential components listed it cannot be argued that justice as fairness favors one of the broad systems of healthcare mentioned over another. Managed competition, employment based, single payer, and the Patient Protection and Affordable Care Act all seem to adequately cover the necessary bases. Each system is then applied to a specific society and tweaked further to better suit the given needs and available resources.

The PPACA is no exception. It strives to address the needs of the people of the United States in the most efficient and acceptable way possible. For example it allows for the subsidy of abortion but only in certain "acceptable" cases. The issue of abortion is extremely contentious in the United States and thus it is a reflection of the society that federal funds may not go towards elective cases. Of primary importance is that the PPACA provides the essential features that I have outlined as being necessary for justice. The PPACA thus fulfills the Rawlsian account of justice.

I have argued that by accepting justice as fairness we are morally obligated to provide universal access to healthcare. This set up the question of whether or not the proposed healthcare reform to the United States could stand up to this account

of justice and fulfill our moral obligation. Upon examining the Patient Protection and Affordable Care Act I have concluded that it provides the components of a healthcare system which are necessary for justice.

The PPACA was arrived at in a contentious and divisive fashion. Even many who see the need for universal access to care disagree that it is the correct way of proceeding. Whether or not it takes the most efficient approach is something I am content to let the policy makers debate. At the very least I believe we can take pride in knowing that our system of healthcare fulfills the obligation we have to one another.

Some readers may be disappointed with these conclusions and find themselves wanting more. There are, of course, so many thorny issues surrounding the healthcare debate that one cannot help but wish to unravel. With these unsolved problems in mind my conclusion may seem relatively modest in its scope. I am satisfied, however, in that I have answered the questions which have guided me from the outset. It was my goal to write a thesis that explored our obligation to one another with respect to healthcare. In the process I wrestled with other large issues such as determining what makes health and healthcare fundamentally special. This was all in an effort to gain a new perspective on the debate surrounding the passage of the Affordable Care Act in the United States. By first answering the larger underlying philosophical questions it became possible for me to comment more specifically on this process and its result. Given my arguments I must conclude that prior to passing the PPACA United States society was unjust. The Obama administrations law then represents significant moral progress.

I believe that in this project I have taken the arguments from political philosophy as far as they can be reasonably expected to go. One cannot hope to gain the specifics of public policy when arguing from abstract political philosophy. At best I can offer broad constraints by which we can evaluate the various systems of healthcare with respect to justice. The details are better left to those with hands on experience: policy makers, economists, and the like.

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