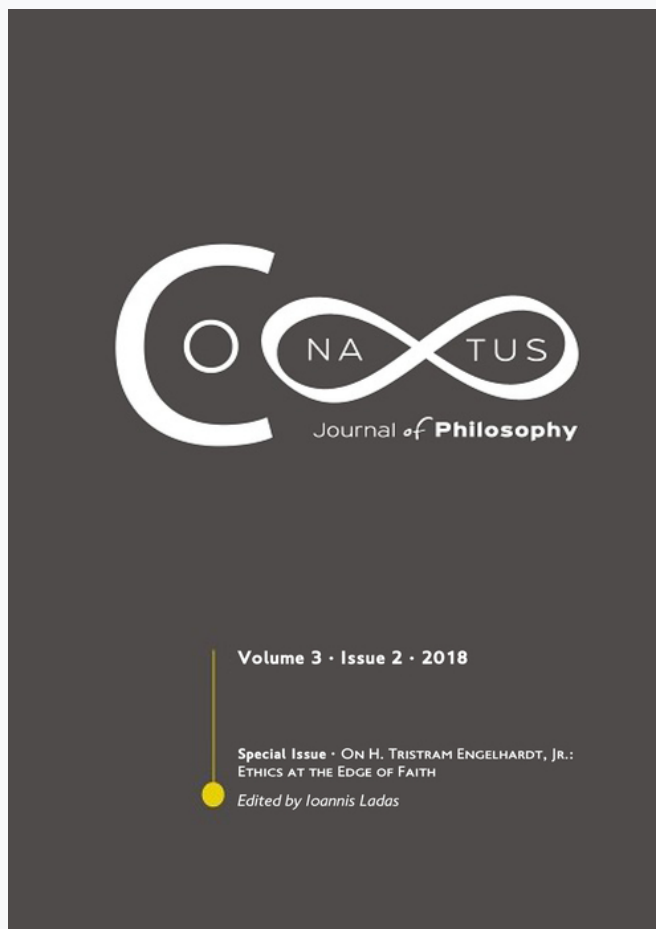


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### Fair Equality of Opportunity in Healthcare

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# Fair Equality of Opportunity in Healthcare

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## Abstract

*The allocation of resources for health, as well as the distribution of other social goods, being a political problem, can also be observed as belonging to the universe of distributive justice, considering that all citizens must have the necessary means for an acceptable physical, psychological and social performance. Individual autonomy, paradigm of a full citizenship in a modern society, cannot otherwise be achieved. Human dignity seems to imply that no citizen can be excluded from the basic health system due to the lack of financial resources. Indeed, equal access of all citizens to basic social goods and therefore to key places in society – principle of fair equality of opportunities – is one of the core aspects of Rawls's difference principle. It is, in essence, about ensuring the exercise of the right to individual self-determination in the relationship between the individual and society, as well as the right to play a social role according to skills and merit. But, it is not only the theory of the social contract that provides for a fair equality of opportunities. Different perspectives of justice contemplate this ideal. As suggested by Tristram Engelhardt Jr individual autonomy must be interpreted as a value in itself and a determining factor for the exercise of a full citizenship. But, justice is an ideal that must be progressively built. Whether in a specific society or on a global scale. And, the great challenge of humanity is precisely to recognize the existing intercultural differences and propose sufficiently flexible ideological systems that can be applied in different countries with very different levels of social and economic development. Without detracting from the ethical principles that should underpin the construction of the 21<sup>st</sup> century global society.*

**Key-words:** *distributive justice, Engelhardt, fair equality of opportunity, healthcare, Rawls*

**T**he allocation of resources for health, as well as the distribution of other social commodities, being a political problem, can also be observed as belonging to the universe of distributive justice, considering that all citizens must have the necessary means for an acceptable physical, psychological and social performance. Individual autonomy, paradigm of a full citizenship in a modern society, cannot otherwise be achieved. However, the principle of solidarity can also

be invoked, as an ethical and social imperative, to protect the most disadvantaged members of society. The principle of solidarity, particularly through the contributory effort of citizens, can allow a balanced allocation of resources in society. In Europe the Convention on Human Rights and Biomedicine<sup>1</sup>, by appealing to a universal right of access to healthcare, promotes this ideal. The ethical and social implications of this Convention may determine the acceptance of this right as a fundamental one in accordance with the Universal Declaration of Human Rights.

Indeed, in most civilized countries the Welfare State formula promoted by Bismark, transformed the ideal of justice into an integral element of social and community life. The acceptance of health as a social good originated a health protection policy adapted to this perspective<sup>2</sup>. However, the Welfare State crisis, mainly related to the increase in life expectancy and the increase in the costs of providing healthcare – mainly due to scientific and technological progress – originated a different approach to this problem. That is, it generated the urgent need to establish priorities in healthcare<sup>3</sup>. Moreover, when it is known that the overall improvement of the population's living conditions (at a social, cultural, educational and economic level) was, together with the provision of medical care, responsible for the sustained evolution of health indicators in developed societies.

Nowadays, and in a global society, citizens are more critical due to the information obtained through different channels of communication. Information regarding new treatment methods and sophisticated technology is rapidly introduced into the health market. Thus, it is the very concept of "right of access to healthcare" which should be reviewed. That is, if the demand for healthcare based on individual needs is unlimited, it is, therefore, essential to limit the supply and, therefore, access to healthcare. But the methods that lead to the establishment of priorities must be transparent and previously legitimized by the democratic process<sup>4</sup>.

### The Ideal of Equal Opportunity

*A priori*, one may question the plausible justification for a fundamental equality between all persons<sup>5</sup>. This equality can be due to the fact that all belong to the human moral community, owing to each other the obligation of support and solidarity. The human being is, in essence, a relational being living and interacting

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<sup>1</sup> Council of Europe, "Convention of the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine", Strasbourg, November 1996.

<sup>2</sup> Jennifer Prah Ruger, "Health and Social Justice", *The Lancet* 364 (2004): 1075-1080.

<sup>3</sup> Yolonda Wilson, "Distributive Justice and Priority Setting in Health Care", *The American Journal of Bioethics* 18, no. 3 (2018): 53-54.

<sup>4</sup> Rui Nunes and Guilhermina Rego, "Priority Setting in Health Care: A Complementary Approach", *Health Care Analysis* 22 (2014): 292-303.

<sup>5</sup> Amartya Sen, *Development as Freedom* (New York: Knopf, 1999).

constantly with his fellow citizens. This is not to say that all people are equal in the strict sense of the term. In fact, we are all biologically and intellectually different. Indeed rationality is the supreme attribute of the human species and also distinguishes and characterizes the personality of each individual. Moreover, true social equality, at all levels and in all contexts, is perhaps an intangible reality. The concept of equality refers to the inclusion in a group that gives equal rights to all its members. At least, with regard to certain basic, fundamental rights.

This concept does not imply behaviour standardization; uniformity is opposed to the very essence of human nature, given that intellectual creativity is a factor that argues in favour of the existence of the moral community itself. Thus, there will always be differences between people, regardless of their fundamental rights. The inalienable rights to life, to food, to the constitution of family, to access to healthcare, do not imply that people are all the same, nor that they ambition to carry out the same life projects. It implies that whatever their intellectual skills may be – hence their ability to flourish within society – they are guaranteed a reasonable level of social conditions consistent with the dignity of the human being. This principle of equal dignity of human beings seems to be decisive in the implementation of a policy of fair equality of opportunity in access to social goods.

However, it should be noted that the different aspects of justice have a general application regarding the distribution of wealth and property. Society, regardless of the diversity of cultures and traditions within it, is generally organized around a State, with rules of social coexistence, which are translated into the creation and approval of own orders, in the ethical and legal sphere. The organization of the State, according to Thomas Hobbes, is based on the assumption that human beings are constantly fighting for survival, being, according to the law of nature, “the enemy of every human being”<sup>6</sup>. In fact, the constant search for happiness requires the human being to always desire more power and therefore more wealth as a guarantee of his survival. And, power implies more power, always at the expense of other human beings. Happiness, being observed as an expression of a continuous progression of individual desire is also the achievement, beyond the possession. This innate desire among human beings, to always wish more power, leads the human community to organize itself through civil law to ensure its survival.

Hobbes further argues that this natural situation of the social man is only possible because in the natural state human beings are very similar to each other, on the physical and spiritual spheres. This natural equality among human beings has a triple aspect: competence, mutual mistrust and the desire for success. It is also argued that these decisions have nothing of just or unjust, given that the concept of justice does not fit into the biological evolution of humanity. The institutional creation of the State, by mutual agreement, seeks to prevent the process of self-

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<sup>6</sup> Tomas Hobbes, *Leviathan, or the Matter, Form, and Power of a Commonwealth, Ecclesiastical and Civil* (1651), ed. Edwin Curley (Indianapolis: Hackett, 1994).

destruction of humans by humans. The State, *civitas* in Latin, derives from this human social pact, created by humans and for humans, exercising its power according to the sovereign will of those it represents. However, an idea of State as a centralised and maximalist structure of power can be clearly contradicted, not in the sense of anarchic coexistence, but in the sense of a minimalist state, of a limited government, that seeks to guarantee public order but allowing individual energies to have free expression. Ensuring, however, social cohesion. Hence the importance of a social protection system including access to healthcare.

Norman Daniels refers that there is a social obligation, through the direct intervention of the State, to provide healthcare according to the “normal functioning” standard<sup>7</sup>. That is, the universality of healthcare access should be promoted, in order to guarantee each citizen’s access to a normal performance and therefore to a reasonable range of social opportunities. In this perspective of justice, disease, disability and incapacity, by restricting opportunities that would otherwise be available to the individual, are observed as unjust and not just as the result of random forces of nature. From this point of view it might be deduced that the right of access to healthcare is decisive for the exercise of a fair equality of opportunities. The right to healthcare access imposes on society a duty to allocate resources according to the health needs of citizens<sup>8</sup>.

The conviction that equal opportunities for citizens reflects the need to ensure “normal” performance should be emphasised and not necessarily “equal” performance. This distinction seems to be fundamental since no person is equal to another in a strict sense. In fact, all citizens should have the right of access, in accordance with their intrinsic dignity, to certain essential goods, so that it is possible to guarantee, at least, a reasonable physical, psychological and social performance. Thus, talents and individual capacities are likely to be achieved, even if only in specific circumstances.

However, equal opportunities may be limited by the scarcity of resources in society if the priorities in healthcare delivery are transparent, public and periodically submitted to an audit process in accordance with democratic rules<sup>9</sup>. This perspective of distributive justice is based on the notion of democratic accountability and justifies the scope and limitations of the provision of healthcare services. According to Norman Daniels the concept of procedural justice may imply, in the context of the provision of healthcare, transparency and accountability<sup>10</sup>. That is, citizens have the

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<sup>7</sup> Norman Daniels, *Just Health Care: Studies in Philosophy and Health Policy* (New York: Cambridge University Press, 1985).

<sup>8</sup> World Health Organization, *Equity in Health and Health Care* (Geneva, 1996).

<sup>9</sup> Norman Daniels, Donald Light and Ronald Caplan, *Benchmarks of Fairness for Health Care Reform* (New York: Oxford University Press, 1996).

<sup>10</sup> Norman Daniels, “Is there a Right to Health Care and, if so, What does It Encompass?”, in *A Companion to Bioethics, Blackwell Companions to Philosophy*, ed. Helga Kuhse and Peter Singer (Oxford: Blackwell Publishers, 1998).

right to be informed about the reasons that led to the establishment of priorities. This concept of public accountability is based on the assumption that decisions are not only transparent and democratic, but also taken in accordance with what “reasonable people” would decide under the circumstances<sup>11</sup>.

According to Daniel Wikler<sup>12</sup>, the intervention of society is growing in the macro allocation of resources for the provision of healthcare. This is partly due to the lack of consensus on the principles by which this allocation should be guided. Again, democratic accountability and its practical application seem to be the most transparent way of applying the principle of justice, at least as far as procedural justice is concerned, although theoretically, it may not be the ideal of distributive justice. In this context, access to new technologies can be legitimately restricted – such as innovative and expensive treatments – but only if this decision is determined by society and imposed by financial constraints of the system.

In order to achieve a fair equality of opportunities, it is fundamental to promote the values that, in a society that is constantly changing, can contribute to this ideal of distributive justice. In the field of healthcare access solidarity in financing and equity in access have been proposed. Equity can refer also to “equality of liberty”. That is, in a more economic than philosophical sense, it can be said that everyone prefers to decide on the allocation of resources instead of accepting what was proposed by another person. An assumption will, of course, be that the individual has the necessary means to make that choice. Thus, equity includes the concept of equality in individual self-actualization.

Justice as equity implies that the criterion underlying the distribution of wealth among members of society is essentially based on individual needs<sup>13</sup>. Achieving equity in access to social goods implies a systematic reduction of disparities between individual citizens and different social groups. One of the main factors leading to the overall improvement in population health measured by health indicators lies both in the reduction of cultural, economic and social disparities between the most and least developed citizens and in the quality of health services. As a political and ideological option, the concept of equity can have different social and economic implications: equity in the allocation of resources, equity in the provision of healthcare, and equity in the payment of healthcare.

The application of the principle of justice can give rise to a distinction between horizontal and vertical equity. By horizontal equity is meant the provision of equal treatment to equal individuals. Vertical equity presupposes unequal treatment for

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<sup>11</sup> Rui Nunes and Guilhermina Rego, “Priority Setting in Health Care: A Complementary Approach”, *Health Care Analysis* 22 (2014): 292-303.

<sup>12</sup> Daniel Wikler and Sarah Marchand, “Macro-allocation: Dividing the Health Care Budget”, in *A Companion to Bioethics, Blackwell Companions to Philosophy*, ed. Helga Kuhse and Peter Singer (Oxford: Blackwell Publishers, 1998).

<sup>13</sup> Philippe Van Parijs, *Qu'est-ce Qu'une Société Juste? Introduction à la Pratique de la Philosophie Politique* (Paris: Éditions du Seuil, 1991).

unequal individuals. Therefore, it is possible to determine relevant properties in the individuals who give expression to this perspective of justice<sup>14</sup>. And, thus, promote vertical equity. In this context, it seems possible that justice is related to the concepts of “necessity” and “normal functioning”, which are perhaps the starting point for an equal opportunities policy. The adoption of measures conducive to vertical equity intends to meet the well-documented sociological reality that the most disadvantaged citizens, from the economic point of view are, also, those with the worst health indicators<sup>15</sup>. That is, it can be at stake the positive discrimination of the most disadvantaged in society.

But in market economies, solidarity does not materialize on purely altruistic grounds in order to achieve equity in the access and distribution of social goods. If “solidarity” means the perception of unity and the will to suffer the consequences thereof, the concept of “unity” indicates the presence of a group of people with a common history and with similar values and convictions. According to the Report by the Government Committee on Choices in Health Care<sup>16</sup> “Solidarity can be voluntary, as when, for example, a person acts for reasons of solidarity, or compulsory when the government taxes the population in order to provide universal services”. Again, in most modern democracies, the State felt the need to find ways to guarantee the fundamental rights of citizens through its tax effort. Indeed, when human beings are free from ignorance and fear and when the standard of living increases steadily, they evolve similarly to freedom and interpersonal solidarity.

Solidarity has different backgrounds from the historical point of view. It can be found, although with different names, in different religious traditions, and in Marxist, socialist and even liberal thought. As a doctrine, or as a political choice, it is deeply rooted in most healthcare systems. The pursued social good – health – not only for the individual but also for society, as well as the symbolic value that disease for everyone, implies State intervention to ensure access to a certain level of healthcare. Solidarity in health can also contribute to another social function. That is, solidarity can generate solidarity, due to the “moral movement of society”<sup>17</sup>. A good example is the creation of a universal public health system as a source of altruism that usually extends to other areas of society.

But it is also necessary to distinguish between intra- and inter- generation solidarity. As an example, promoting the welfare of young generations is the best

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<sup>14</sup> Tom Beauchamp and James Childress, *Principles of Biomedical Ethics* (New York: Oxford University Press, 2013<sup>7</sup>).

<sup>15</sup> Peter Chisholm, “Preventive Healthcare Strategies are a Matter of Social Justice”, *BMJ* 361 (2018): k2699. <https://doi.org/10.1136/bmj.k2699>.

<sup>16</sup> Report by the Government Committee on Choices in Health Care, Ministry of Welfare, Health and Cultural Affairs, The Netherlands, 1992.

<sup>17</sup> Cristina Brandão, Guilhermina Rego, Ivone Duarte, and Rui Nunes, “Social Responsibility: A New Paradigm of Hospital Governance?”, *Health Care Analysis* 21, no. 4 (2013): 390-402.

way to guarantee for a stable support (namely through a healthy productive force) of the actual generation in the future. So guarantying the right to an open future of the young generations it is a win-win strategy. That is why it is difficult to accept any strategy that is inter generationally disruptive. Such as the “fair innings” theory that states, based on the age of each citizen, that justice in resource allocation should be related to the number of years lived and, thus, with the fair share of the social resources already consumed<sup>18</sup>. According to this perspective, as the life expectancy in modern countries is around eighty years, society’s responsibility to provide healthcare would be inversely proportional to the number of years lived. Beyond the average life expectancy, roughly eighty years, society would no longer have the responsibility of providing healthcare to elderly citizens.

A strictly utilitarian view contributes to this theoretic arrangement because by giving preference to programs of preventive health to the young generations, we are increasing the number of “years-benefit” and, therefore, of the overall well-being of society. Daniel Callahan<sup>19</sup>, for example, argues that society must provide the means for children to reach third age, and only use the scarce financial resources so that the elderly can become even older when that goal is achieved. However, in the long run the social impact of these measures, by excluding entire groups of citizens from basic healthcare, can contribute to the disintegration of society which is precisely what utilitarianism seeks to avoid.

However, it should be noted that there are huge global disparities in the amount of resources that can be allocated to healthcare delivery. Hence, a variable geometry may imply a conceptual reframing and an adjustment of the application of these principles, according to the concrete reality of each society<sup>20</sup>.

### Progressive Justice

There are different conceptual roots regarding the concept of justice in the allocation of resources for the provision of healthcare. The various theories invariably appeal to the formal principle of justice that “equals” should be treated “in the same way” (formal equality principle of Aristotle). This principle is called formal because it outlines the arrangements of justice between citizens, although it does not allow to deduce what substantive differences make citizens equals or not equals.

The lack of substance of this formal principle is revealed by the fact that it is not possible to specify the relevant properties of the subject – or circumstances – that

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<sup>18</sup> Allan Williams, “Economics, Society, and Health Care Ethics”, in *Principles of Health Care Ethics*, ed. by Raanan Gillon (London: John Wiley & Sons Ltd, 1994).

<sup>19</sup> Daniel Callahan, *Terminating Treatment: Age as a Standard*, *Hastings Center Report* (1987): 21-25.

<sup>20</sup> David Buchanan, *An Ethic for Health Promotion: Rethinking the Sources of Human Well Being* (New York: Oxford University Press, 2000).



allow the determination of this equality. It is precisely to incorporate “substance” into the “form” proposed by Aristotle that different theoretical currents proposed, over the centuries, different material principles of justice.

### Material Principles of Justice

1. Radical Egalitarianism: Identical distribution of social goods by all citizens. For example, access to universal vaccination programs;
2. Necessity: Access to social goods according to individual needs, that is to say, equal consideration of the interests of each citizen. For example, access to hospital and pre-hospital medical emergency;
3. Effort: Access to and distribution of social assets would be in line with the effort made by each one. For example, remuneration by medical act in the case of private practice;
4. Merit: Access to scarce goods in society is done according to individual merit. For example, access to the best universities;
5. Social Contribution: The contribution of the individual to society is considered decisive (from the economic, family, cultural, or other point of view). For example, the God's Committee, which in Seattle in the 1960s selected patients for kidney dialysis according to socioeconomic status, the level of income and the number of descendants;
6. Competition and Market: Access to and distribution of social and economic assets, as well as access to key positions in society, are made according to the rules of the market. For example, the charges of commercial health insurances.

All social protection systems, in particular as regards access to health, integrate different material principles of justice, sometimes contradictorily, so that the need arose to resort to different “distributive justice theories” to better frame the right of access to healthcare. By theory it is understood an integrated and systematized body of rules and principles with internal coherence and logic. The view of distributive justice, that is most in conformity with the conceptual formulation of the Welfare State, is perhaps the egalitarian theory that rests on the concept of social contract. This contract implies that a plural society, well organized and well structured, in the words of John Rawls<sup>21</sup>, has as fundamental values individual freedom and fair equality

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<sup>21</sup> John Rawls, *A Theory of Justice* (New York: Harvard University Press, 1971), and John Rawls,

of opportunities in access to social goods.

Rawls defines a theoretical situation in which the impartial observer (reasonable citizen) is on an imaginary plane – ahistoric and acultural – not knowing his financial, cultural, social, health or illness position (under a veil of ignorance). In this situation, any reasonable citizen would choose to distribute social assets and access to key positions in society, so that, at the end of the decision-making process, the most disadvantaged people are protected. The two principles of justice of John Rawls were, thus, formulated in a hierarchical order:

Every citizen must have access to the most complete system of basic freedoms;

- a. access to key positions in society must be carried out on a fair equality of opportunities basis (and not just on formal equal opportunities);
- b. In the end the allocation of resources and the distribution of social goods should privilege the least favoured people.

The principle of fair equality of opportunities becomes the main instrument that determines social policies in the developed world. This justifies some policies of positive discrimination, of which affirmative action in the United States of America or in Brazil is a good example, by giving priority to access to certain key positions in society to members of cultural minorities (universities for example). Or in the implementation of gender equality and protection of the handicapped people policies.

The existence of formal institutions legitimated by the public authorities is a direct consequence of this model of social organization, being a prerequisite for the widespread implementation of these values. Rawls also refers to the concept of “social primary goods” that every citizen wants for himself as a way to achieve self-actualization. It is first and foremost the confirmation of freedom as a fundamental right, second, the fair distribution of socio-economic benefits and, finally, access to these benefits on an equal opportunities basis. In any case, there is a hierarchical order among the principles as freedom is specially valued and protected.

For the libertarians, such as Robert Nozick<sup>22</sup>, the fundamental values of a democratic society lie in the personal freedom and, for its effective exercise, the right to private property. It should be noted that libertarianism comes essentially from the field of political philosophy and not from economic theory. Although there is some similarity with the expression “liberalism”, they should not be considered equivalent concepts, especially given the economic dimension usually associated with the term “liberal”. Freedom of thought, expression, or association overlap a utopian vision of equality and social justice. Even so, equal opportunities can be considered as an essential instrument for the effective exercise of individual freedom. According to this perspective all people live – in fact, and contrary to what was

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*Political Liberalism* (New York: Columbia University Press, 1993).

<sup>22</sup> Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974).

proposed by John Rawls – in a society with a pre-established culture, with a history and tradition. Moreover, citizens are owners (or not) of property and wealth, these goods being transmitted over the generations. Thus, the coercive expropriation of individual property, namely through taxes, is legitimate but only if it is aimed at obtaining certain social goods (such as public health or national defence) that cannot be left to individual responsibility. The expropriation through taxes is illegitimate if it aims at obtaining goods that can be the responsibility of each person – such as health protection or education (not basic).

Whatever social contract exists between the citizens and the State, it must be taken into account that there are various ways of not complying with tax obligations and, therefore, a contributory/distributive justice is not achieved. On the conceptual plane, the Laffer Principle states, precisely, that from a certain level of taxation taxpayers and institutions find methods, legitimate and illegitimate, of tax evasion. So, pragmatically, greater social justice can be achieved through a lower rate of progressivity in direct taxes, according to the fact that most people, by not developing an in-depth system of values, have a distant view of the State, only as a guarantee of their rights and not as a source of obligations. Therefore the redistribution of private property through taxes is seen frequently as unfair. The existence of a “distributive justice” is therefore questionable, and even “contributory justice” (taxes) would be of doubtful legitimacy, because the retribution of property according to the criterion of necessity is generally perceived by libertarians as a civilized form of “forced labour”. Only admitted, thus, with fiscal consent.

Tristram Engelhardt Jr.<sup>23</sup>, for example, states that the biological lottery and the social lottery are sometimes considered as a personal and family misfortune, but that their perverse effects are not related to the notion of justice nor to social justice, because, they do not stem from the intentional action of third parties. Thus, according to libertarians there is no basic human right of access to healthcare. There could exist a formal right but only if it results from the freely expressed will of the citizens. It follows that for libertarians health is considered primarily as a duty of citizenship, a personal responsibility and not as an obligation of the State.

Engelhardt Jr. further argues that postmodern pluralism that characterizes today’s discourse should take into account the divergence of opinion and the fact that any ordering of primary goods is based on certain ethical/philosophical assumptions, or a pre-defined notion of the common good. Therefore, mutual agreement – that is, the consent of individuals to common goals – is the only viable instrument for healthy social cooperation between citizens. In this context of intersubjectivity, and even if there is disagreement on the ethical foundation of policy decision-making, it is sufficient to accept common rules of practice in order to comply with the requirements of procedural justice. Mutual agreement on the procedures to be

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<sup>23</sup> Tristram Engelhardt, *The Foundations of Bioethics* (New York: Oxford University Press, 1996<sup>2</sup>).

adopted by citizens can even become a potent cement on a global scale, by allowing peaceful coexistence between peoples with distinct cultural traditions. And, it is only in this way that, for libertarians, it would be permissible to conceive a formal “right” to health, but never a substantive one.

A third perspective of enormous influence in distributive justice is called utilitarianism, existing different backgrounds of this theory, generally designated by consequentialist or teleological currents. That is, what defines the intrinsic goodness of a social intervention is its purpose, its consequences, the classic paradigm that the ends justify the means adopted, not necessarily existing proportionality between the two. The main values in question are the efficiency – economic and social – and the public good. From the methodological point of view, the principle of utility is adopted: an intervention is legitimate if it promotes the greatest possible good for as many people as possible.

Of course, utilitarian strategies favour interventions that target large segments of the population – such as vaccination or prevention programs – to the detriment of expensive treatments, of marginal benefit, of limited scope to small groups of citizens. A criticism of utilitarianism is that it allows for discretionary interventions. That is, discrimination of whole groups of people, such as the disabled, cultural minorities or the elderly, jeopardizing the principle of intergenerational solidarity and intercultural cohesion. But also, from the point of view of utilitarianism, a formal right to healthcare access can be shaped, starting from the assumption that in this way the utility is maximized. In fact, a healthy society is a more balanced, stable and productive one.

Ultimately, this may involve a genuine procedural justice: fair and transparent procedures, under the supervision of society. It is, in fact, the just acquisition and transfer of property and the just rectification of the breach of freely celebrated contracts. That is, a reparatory justice of which the criminal justice is a good example. The concept of public accountability is to be viewed in this context, that is, the need to be accountable for personal and collective decisions<sup>24</sup>. Procedural justice as the common denominator to all theories of distributive justice, may not be the best but the only solution, in a society where citizens find themselves with different viewpoints, as true “moral strangers”, and where there is no unanimous view of the common good.

The existence of a right to healthcare access should be interpreted in the light of egalitarian theories – namely the principle of fair equality of opportunities. That is, every citizen must be in the same starting circumstances, biologically and socially, in order to develop his talents and abilities, in accordance with individual autonomy. But also, utilitarian and libertarian values should be considered. First, the necessary cost control in health and the analyses proposed by health economists, of cost-benefit,

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<sup>24</sup> Rui Nunes, Guilhermina Rego, and Cristina Brandão, “Healthcare Regulation as a Tool for Public Accountability”, *Medicine, Healthcare and Philosophy* 12 (2009): 257-264.

cost-utility and cost-effectiveness<sup>25</sup>. On the other hand, the libertarian principles of the autonomy of patients and providers, freedom of choice and prescription, must also be cherished in a modern and plural society.

But this interdependent arrangement in resource allocation must take into account a hierarchy of individual needs. According to Abraham Maslow's primary and secondary needs<sup>26</sup> it can be affirmed that fair equality of opportunities, as an ethical and social imperative, implies that all citizens must have access to a certain level of conditions that allow them to have "normal functioning". That is there are different levels of needs that influence human behaviour. Hierarchically superior needs (placed at the top of the pyramid) only manifest themselves when the lower level is satisfied. These include physiological and safety needs (primary needs). In the higher level secondary needs emerge, which are social needs, and also esteem and self-actualization.

Proportionality between the hierarchy of needs in Maslow's pyramid and the concept of normal functioning can be suggested<sup>27</sup>. It should be noted, however, that as hierarchically inferior needs are satisfied, the concept of normality becomes more comprehensive, implying its own redefinition. If we consider the fact that "normal" may mean a situation of physical, psychological and social well-being, (and, perhaps, also spiritual, according to the World Health Organization definition), then it becomes necessary to satisfy the primary needs to achieve a situation of true equality of opportunities<sup>28</sup>.

## Conclusion

Human dignity seems to imply that no citizen can be excluded from the basic health system due to the lack of financial resources. The exercise of individual autonomy, a value specially cherished in plural societies, implies equitable access to certain basic, primary goods, namely to healthcare considered essential<sup>29</sup>. Indeed, equal access of all citizens to basic social goods and therefore to key places in society – principle of fair equality of opportunities – is one of the core aspects of Rawls's difference principle. It is, in essence, about ensuring the exercise of the right to individual self-determination in the relationship between the individual and

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<sup>25</sup> Penelope Mullen and Peter Spurgeon, *Priority Setting and the Public* (Abingdon: Radcliffe Medical Press, 2000).

<sup>26</sup> Abraham Maslow, "A Theory of Human Motivation", *Psychological Review* 50, no. 4 (1943): 370-396.

<sup>27</sup> Rui Nunes and Guilhermina Rego, "Priority Setting in Health Care: A Complementary Approach", *Health Care Analysis* 22 (2014): 292-303.

<sup>28</sup> Z. Bankowski, J. Bryant, and J. Gallagher (Eds), *Ethics, Equity and Health for All*, CIOMS - Council for International Organizations of Medical Sciences: Geneva, 1997.

<sup>29</sup> Martha Nussbaum, "The Good as Discipline, the Good as Freedom", in *The Ethics of Consumption and Global Stewardship*, ed. D. Crocker, 312-41 (Lanham, MA: Rowman and Littlefield, 1998).

society, as well as the right to play a social role according to skills and merit. But, it is not only Rawls's theory of the social contract that provides for a fair equality of opportunities. Different perspectives of justice contemplate this ideal. Individual autonomy must be interpreted as a value in itself and a determining factor for the exercise of a full citizenship. In fact, the poor, the homeless, the disabled, among others, cannot truly be considered as "equals" regardless of fundamental rights. And, for two reasons. Firstly, because of the inability to defend their interests, and secondly because of the vulnerable situation in which they are.

That is, equity in access to healthcare, materialized through solidarity in financing and equal opportunities in access, implies that all people with similar health needs should have the same effective opportunity to receive appropriate treatment. However, equity does not imply that in all circumstances there is a social duty to provide for treatment, but only that the specific needs of all citizens are considered in parity. Always under the scrutiny of society through the compliance of fair and democratic procedures. Accountability is the guarantor of the exercise of responsibility, both at professional level and administrative control.

But, justice is an ideal that must be progressively built<sup>30</sup>. Whether in a specific society or on a global scale. And, the great challenge of humanity is precisely to recognize the existing intercultural differences and propose sufficiently flexible ideological systems that can be applied in different countries with very different levels of social and economic development. Without detracting from the ethical principles that should underpin the construction of the 21<sup>st</sup> century global society.

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<sup>30</sup> Rui Nunes, Sofia Nunes and Guilhermina Rego. "Healthcare as a Universal Right", *Journal of Public Health* 25 (2017): 1-9.

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