

EXPANSION OF RAWLS' THEORY OF JUSTICE AS FAIRNESS
TO HEALTH CARE

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ABSTRACT

EXPANSION OF RAWLS' THEORY OF JUSTICE AS FAIRNESS TO HEALTH CARE

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This thesis aims to contribute to Norman Daniels' expansion of Rawls' theory of Justice as Fairness to health care by considering individual responsibility in maintaining and restoring health. The thesis also considers transplantation as a special case and develops a Rawlsian model for transplantation.

Keywords: John Rawls, health, transplantation, justice, inequality, fairness,
Norman Daniels

ÖZ

RAWLS'UN ADALET KURAMININ SAĞLIK SİSTEMİNE GENİŞLETİLMESİ

Alpınar, Zümrüt
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Bu çalışma, Norman Daniels tarafından sağlık sistemine genişletilmiş olan Rawls'un adalet kuramına, kişinin kendi sağlığını sürdürmesi ve de korumasında ne kadar sorumlu olduğu konusunda katkıda bulunmayı amaçlamıştır. Bu çalışma, ayrıca organ nakli konusunu da özel bir konu olarak çalışmış ve Rawls'un kuramına uygun olarak geliştirilen bir modele uyarlanabileceğini göstermiştir.

Anahtar Kelimeler: Rawls, sağlık, organ nakli, adalet, eşitsizlik, hakkaniyet,
Norman Daniels

To My Parents

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CHAPTER 1

INTRODUCTION

Inequity is one of the most persisting social problems that have busied many thinkers who have proposed theories for its solution. We encounter ethical problems generated by inequity almost everywhere. Today, inequalities especially in economic and social conditions are accepted as fact of life. Inequalities may lead to inequity when those inequalities are avoidable and unfair. Several theories of justice have been developed by many important thinkers in order to find possible solutions to problems that are brought by such inequalities. One of those thinkers is John Rawls who, I think, seems to accept inequality in the most appropriate way possible. According to him, inequality in society is acceptable only in so far as the least advantaged members of the society benefit from it. I think, by stating that the natural endowments which people have from birth and the irrelevant characteristics of individuals should not influence rights that individuals should have and the policies that are held by the government, Rawls develops a very plausible theory of justice called Justice as Fairness which provides us with the most promising answers to the questions that inequity generates. This theory draws our attention to individuals' needs, to the importance of equality of opportunity and to the impact of policies, which are enforced by the government, regarding individuals' fulfillment of their potentials and providing the conditions to pursue their own conceptions of the good in order to become full contributors to their society.

From Rawls' theory of justice as fairness, it can be argued that because of its impact on the range of opportunity open to individuals, health should be considered important. It can also be argued that health conditions might have a great impact on people's life prospects. We cannot claim to have a "right to health", since health is merely a condition; however, as a

basic human right, everyone should have a right to get adequate health care she needs without any regard to her ability to afford the services. Moreover, it can also be maintained that the possibility of using other rights that people have and their potential to fully develop themselves would be diminished if they cannot get adequate health care when they need them. If people were deprived of their health, then, it would not be so surprising that they will be less likely to fulfill their potentials. Today, we observe that people may not be able to get adequate health care when they need, due to their inability to pay for the service. Furthermore, there is really a problem about the scarcity of resources. When the issue is about the distribution of goods and health care services in relation with rights and justice, then we have to consider both health care ethics and political philosophy. It has widely been accepted that health is not solely determined by health care services and the way they work, but also there are many factors that determine the health condition of the individual. These factors can be called as social determinants of health, which are shelter, nutrition, working conditions, environment, social class, education, etc. I must also emphasize that genetic factors also play an important role in individual's health conditions. Social determinants of health signify the importance of responsibility that the society and government have towards individuals about their health conditions. I think, Rawls' Theory of Justice as Fairness provides us with the most promising answers considering the influence of those determinants of health. I think, by considering health care as an institution regulated by Rawls' two principles of justice and fair allocation of resources, it is possible to hold the risk of bad health influenced by social conditions at the minimum level. Health does not have an important place in Rawls' theory of Justice as Fairness. Norman Daniels, who has expanded Rawls' theory of justice to health care successfully, draws our attention to the importance of health. In Rawls' system, there are background institutions that guarantee equal basic rights and liberties and fair equality of opportunity, and the two principles of

justice require to maximize the expectations of the least-advantaged members of the society. However, his theory does not provide us with any distributive theory of justice for health care, because in his system no one is sick. However, this is not the fact. People do suffer from diseases and from several health problems. For Daniels, health should be considered as important because of its impact on the range of opportunities that an individual has. Since people may differ in their health care needs, to consider health care as one of the primary goods (which are the basic rights and liberties, freedom of movement and free choice of occupation against a background of diverse opportunities, powers and prerogatives of offices and positions of authority and responsibility, income and wealth, the social basis of self-respect) would risk the generality of these goods. Therefore, Daniels claims that health care should be considered as an institution among the background institutions regulated by the opportunity principle because of its impact on the range of opportunity. However, as he also states, he did not take into account the responsibility of the individual in maintaining and restoring her own health. In my thesis, I will also try to contribute to the theory, which Daniels expanded by arguing for the importance of the determinants of health and by showing that they are avoidable if the government holds certain policies. I also think that individual's health conditions should not be thought to be merely dependent on them. If the determinants of health are avoidable, and if those determinants lead to inequalities because of their effects on health conditions of people, and if poor health ends up with inequalities in economical and social sense, then doing nothing to avoid risk would lead to inequity. I will also endeavor to show that a Rawlsian model can be used for transplantation, which offers relatively more reasonable solutions as compared to consequentialism that may sometimes have morally unacceptable consequences. I consider transplantation in my thesis, because dysfunctional or malfunctioning organs, as it is so in poor health, affect the range of opportunity open to individuals.

From this point of view, I think, considering a Rawlsian understanding of justice for transplantation would not be weird for Daniels, too; to take transplantation as a special case.

CHAPTER 2

RAWLS' THEORY OF JUSTICE AS FAIRNESS

2.1. Earlier Theories of Social Contract

Thomas Hobbes is the first thinker in the modern period who developed the idea of social contract in his *Leviathan* (1651). According to Hobbes, before people come to agree on a contract, they are in the state of nature. In the state of nature, no one is safe. The only right the people have is the right to live. In this sense, “the right to live” is a natural right which is an inalienable human right. Since everyone is egotistic, they will act in *any* way that help them survive. It might be claimed that people also have right to kill others in order to preserve their own lives. Therefore, the state of nature is not a very safe state; everyone is vulnerable to threats by others. However, people have reason, and their own reason dictates them to come to an agreement with others by which they will all live together safely and fearlessly. Because, reason’s goal is self-preservation, only by limiting their natural right to live, they can live together safely. This agreement is called social contract.

In Hobbes’s system, people are seeking for safety. Therefore, it is necessary for these people to select a sovereign who sets up a government which will both make and enforce laws. The sovereign’s duty is to protect its citizens and to provide them with trust. If the sovereign fails to guarantee such a safety, then people do not have to obey the laws and can revolt against the sovereign. Reason dictates them to come to an agreement and to set up a government, since their rationality seeks for preservation; and therefore,

peace and safety. This can only be done by a state which has a sufficient power to keep peace.

Hobbes's insight is to see that, except when one is in clear and present danger, in which case one has an inalienable right to defend oneself, the best way to guarantee one's long-term preservation is to give up one's right to act on one's own decisions about what is the best way to guarantee one's long-term preservation and agree to act on the decisions of that single person or group who is the sovereign. (Audi 1999, p. 389)

Hobbes's political philosophy and moral theory seem to be in accordance with each other. To act in a way in order to further one's own interests and desires is a rational act. Also, it is rational to perform a moral action if that action satisfies one's interests and desires (Audi, 1999, p. 183). Therefore, in the light of what I have stated above both for the state of nature and social contract, living harmoniously would maximize everyone's interests and desires. So, people mutually agree on a social contract in order to further their interests. Hobbesian morality "is a human-made institution, which is justified only to the extent that it effectively furthers human interests" (ibid.). Therefore, it might be said that this sort of agreement which is called social contract is a device which reveals "what we would agree to" and has moral force showing how rational the agreed-upon standard is.

John Locke has developed his idea of social contract in his *The Second Treatise of Government* (1690). Locke also starts with a condition called the state of nature; however, his state of nature is quite different from what Hobbes described. For Locke, the state of nature is not a state of war as Hobbes states, but an initial condition before the agreement. It is also not a pre-moral state, although it is pre-political. In the state of nature, people are assumed equal with each other and they all have inalienable natural rights which are life, liberty and property.

The state of nature has a law of nature to govern it, which obliges everyone; and reason, which is that law, teaches all mankind who will but consult it, that, being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions. (Locke 1966, p. 5)

The state of nature is viewed as a state of liberty. However, one is not free to do whatever she wants to do which would harm others. In this state, there is the Law of Nature which is given to people in common. Since everyone is assumed equal with each other, they are capable of discovering and being aware of having been bound by the same law (*The Internet Encyclopedia of Philosophy*, 2006). Therefore, in the state of nature, everyone is free to pursue their own interests under the Law of Nature.

For Locke (1966), nature is given to all mankind with all the things, which are to the benefit of the people to live and to survive (pp. 14-15). People, by using their reason, can improve these things for the benefit of life. According to Locke, if we are to talk about property rights, then we have to consider the labor for that. With reason, one becomes aware of the possibility of improving what nature has already given to all men. But, when can we say that one owes something if nature is given to all men? The answer lies in labor. “[W]hen you labour on some unowned thing [in the sense that its nature’s part that everybody owns, which is something common] you mix your labour, something which is part of you, with that thing, and thereby make it yours” (Thomas, 2006, p. 94).

That labour [the labor of his body and the work of his hands] put a distinction between them [what he had mixed his labor with; i.e. the cultivated soil] and common; that added something to them more than nature, the common mother of all, had done, and so they became his private right The labour that was mine removing them out of that common state they were in, hath fixed my property in them. (Locke, 1966, p. 16)

Property plays an essential role in Locke's theory. In the state of nature, since everyone has a right to have properties, they have a right to defend that property. In order for one thing to become a property of one's, one must labor it, only then it belongs to her. The state of nature may turn into a state of war if one steals from another what that person owns. And since there is no civil authority that people can appeal to in such a condition, a war can occur between people. This can be accepted as one of the reasons why people would agree to form a government.

The political society comes into existence when men come together to form a civil government to punish those who transgress the Law of Nature. By this way, men give their executive power to a civil government. By doing this, "they then become subject to the will of the majority" (*The Internet Encyclopedia of Philosophy*, 2006). This will of the majority can be called as the general will. They come to an agreement and form a government by their own consents. Only by this way, they will enjoy their properties and will live more safely. "When any number of men have so consented to make one community or government, they are thereby presently incorporated, and make one body politic, wherein the majority have a right to act and conclude the rest" (Locke, 1966, p. 49). The government's duty is to protect people's properties and provide well-being. Unless the government or the king is successful in providing these, then people have a right to revolt against the government or the king, and then the same process begins to form a new government.

Jean-Jacques Rousseau developed his theory of social contract in his *The Social Contract* (1762). In his essay *Discourse on the Origin and Foundations of Inequality Among Men* (1755), he describes the nature of humans, and the progress of becoming a civil society historically (*The Internet Encyclopedia of Philosophy*, 2006). According to Rousseau, in the state of nature everyone was free and was living peacefully. Since it was a small group of people, the few needs of the people could easily be satisfied

by nature. However, as time passes, population increased and families started to unite forming small societies; therefore, their needs grew large. There occurred the idea of private property that led to inequalities among people. With the idea of private property, social classes started to form; because, some people might have some things, while some others did not. Therefore, those who were property owners decided to form a government in the light of their own interests in order to protect themselves and their properties from those who did not have any. Although every man was born free and was free in the state of nature, they became dependent on each other through economic and social inequalities.

The contract which had to be for the interest of everyone in the society, was for the interest of a few. In order to find a remedy for this historically ill-formed society, he developed a contract theory in his *The Social Contract* (1762). The goal of social contract was both to enable individuals to be free and live together. This could only be accomplished by an agreement consented by all men who are equal. Since they are equal in the sense of being human, no one can have a right to govern the other; however, this right can only be given to the government formed by free and equal individuals' consent.

[T]he social pact, far from destroying natural inequality, substitutes, on the contrary, a moral and lawful equality for whatever physical inequality that nature may have imposed on mankind; so that however unequal in strength and intelligence, men become equal by covenant and by right. (Rousseau, 2004, pp. 24-25)

This government must be ruled not by individual preferences or interests, but only by general will, which can only be created by free and equal persons. The society must be governed on the basis of common good. "So long as several men assembled together consider themselves a single body, they have only one will, which is directed towards their common

preservation and general well-being” (p. 122). The general will which is accepted and understood by people is directed to serve for common good.

[I]n order that the social pact shall not be an empty formula, it is tacitly implied in that commitment - which alone can give force to all others – that whoever refuses to obey the general will shall be constrained to do so by the whole body ... for this is the necessary condition which, by giving each citizen to the nation, secures him against all personal dependence. (p. 19)

In Rousseau’s contract theory, there is a legal right of property, which is quite different from Locke’s understanding. For Locke, property right was a natural one; however, for Rousseau, by social contract one can have a legal right of property (p. 21), although for one to justify that a piece of land belongs to herself, she needs to labor (p. 22). In the absence of a legal title, the other’s must respect to that ownership which is her possession. Rousseau shows the difference between possession and property, when he states that “*possession* ... is based only on force or ‘the right of the first occupant’, and *property* ... must rest on a legal title” (p. 21, Rousseau’s emphasis).

2.2. Rawls’ Theory of Justice as Fairness

John Rawls is one of the great philosophers of our time in political philosophy. His theory of justice is one of the best theories which provides the answers for a fair system for all.

Rawls’ Theory of Justice as Fairness is a contractarian theory that “generalizes and carries to a higher level of abstraction the familiar theory of the social contract as found, say, in Locke, Rousseau, and Kant” (Rawls,

1999, p. 10)¹. According to the theories of social contract, people are in the state of nature before they come into an agreement with each other. In the state of nature, people are said to be rational and egoistic. They consider their own interests only. For contract theorists, such a state of nature is an insecure situation, since there is always the risk of being harmed by another for her own interests. However, according to social contract theorists, if people come into agreement with each other in order to build up a society, everyone in that society will be protected by the government. Only then do people have certain rights and liberties which are not to be given up and which are under the protection of government.

In contractarian theories of justice, the aim of the hypothetical contract is to become aware of the rights and liberties that others also have as much as we do. Therefore, with this social contract individuals realize that every other individual is equal with themselves which means that their all rights and liberties are protected by the government's law and policies and people are treated equally as citizens. The notion of the contract is important in the sense that it signifies "what people would agree to" when everyone is considered to be equal and rational. This sort of agreement can be accepted

¹ Kant is said to have contributed to social contract theories, although it is not fully developed. Kant's understanding differs from Rousseau's in the sense that whereas for Rousseau social contract is the result of a historical development, for Kant it is hypothetical and does not involve a historical act (*Stanford Encyclopedia of Philosophy*, 2007). Social contract can be a device in order to show which policies would be just for a society or what is moral and what people would agree to. "[S]ocial contract reflects reason" (ibid.); therefore, for Kant, people having reason would agree about the social contract. As it is in Hobbes, people can be forced to have a social contract. However, to have social contract is not against our will. Because, for Kant will is the practical reason itself; our rational choice, which is a choice that we choose dependent on the categorical imperative. Only a rational being has the power to act in accordance with the idea of laws-that is, in accordance with principles-and thus has a will. Since reason is required if we are to derive actions from laws, the will is nothing else than practical reason (Kant, 2002, p. 214). It can be said that Kant's contractarian understanding is contrary to Hobbesian understanding in the sense of morality. For Hobbesians, contract language is used to show that morality is a human invention which should be for the mutual benefit of each member. However, in Kant, the contract language "is meant to show that moral principles and conceptions are provable theorems derived from a morally revealing and authoritative reasoning process or 'moral proof procedure' that makes use of the social contract idea" (Audi, 1999, p. 183).

as a device showing that the agreed-upon policies and laws are rational for us to accept.

In order to find acceptable and promising answers to the questions that are generated by inequity, many theories of justice have been developed. Now, I will consider some of those theories and will try to show their weaknesses, and then will endeavour to defend a contractarian understanding of justice with Rawls' theory of justice, which provides us with the most plausible solutions to the problems that are generated by different interests of various people in cases of distribution of resources and rights.

According to the egalitarian theories of justice, goods in the society have to be distributed equally. According to these theories of justice, people are accepted as valuable in themselves. However, these theories miss one important constituent. Every individual differs from every other sociologically and biologically; therefore, everyone would have different needs and wants. In a society regulated by an egalitarian understanding of justice, people would all get the same things whether they need it or not (Garrett et al., 1989, p. 76). Such a theory of justice, therefore, undervalues the fact that needs are different. In other words, it disregards the actual needs of individuals. Therefore, some people would have too much of something, while others would have too little of a good which might threaten their life and dignity. So, as it is also claimed by Garret et al., such a theory of justice would make society pointless, since society must protect the individuals' dignity and must promote the common good (ibid.). Although I believe that a theory of justice based on needs must be developed, the concept of needs must be defined so clearly that it will not lead to any confusion between needs and mere wants or preferences.

“According to an entitlement theory of justice, goods ought to be distributed according to a system of contracts, and the only claims of justice are those surrounding the meaning and performance of those contracts” (p. 77). This system is found in market economy and is used widely in the

United States. Such a theory of justice may easily lead to injustice among people, because this system simply means that only those who can afford certain things can obtain those things. In this system, the contract signifies insurance policies. For instance, one cannot get adequate health care service if she is not able to afford it or if she does not have any health insurance. In health care system in general, a major discrimination between advantaged and disadvantaged patients (in the sense that those who can afford and those who cannot afford a service) seems to be systematically committed on the basis of wealth. This discrimination evidently means that there is a process of purchasing and selling health services. “Access to [health] care ... varies by economic status” (Smith, 1999, p. 148). Medical benefits are distributed unequally because of the high cost of health care services and are “seen as the object of private or social insurance schemes” (Daniels, 2002, p. 4). Although this inequality leads to injustice, surprisingly this does not seem to be considered as a major problem probably because of the entrenchment of the ideas of economic inequality, especially as a result of the hegemony of neo-liberal policies and globalization of market economy. (Although there is the socialist/social state model that envisions providing health care for free for everyone, today economic inequality seems to be accepted as a fact.) D. M. Dewar (1998) reports that in the United States, “health care access is limited by patients’ financial barriers” (p. 159). This simply means, “Money talks!” Something seems to be disturbing in this approach. No one can be denied to have some basic social goods such as sheltering, nutrition and health care even when people cannot afford it. I think, therefore, that an entitlement theory of justice does not seem to provide the most plausible and promising answers.

I believe utilitarian theories of justice do not provide more promising answers, either. Utilitarianism is “the moral theory that an action is morally right if and only if it produces at least as much good (utility) for all people affected by the action as any alternative action the person could do instead”

(Audi, 1999, p. 942). At first sight, such a theory may seem to provide possible answers to many problems in practice. However, if we consider it in more detail, we will see that by such an understanding of justice certain rights of some people can easily be overridden for the sake of greater utility. Since utilitarian theories of distribution call for a calculation of the consequences of an action on the basis of pleasure and pain of the result of the action, it requires realizing the greatest benefit for the greatest number.

[U]tilitarian approaches neglect considerations of justice that focus on how benefits and burdens are distributed, apart from aggregate welfare. For example, social utility might be maximized by not allowing access to health care for some of society's sickest and most vulnerable populations. (Beauchamp and Childress, 1994, pp. 335-336)

If this is so, it can be argued that it is not a theory of justice, but a theory of public good (Garrett et al., 1989, p. 79). A just distribution, according to this theory, involves only maximizing the benefits of the services and goods (ibid.). Thus it misses the point that persons are individuals, and an individual is not merely a part of the group in which she must work for its benefit.

John Rawls, in his *A Theory of Justice*, states that if it is natural for one man to satisfy all his desires and wants, then it is rational for a society to satisfy to maximize the desires of its members (Singer, 1994, p. 338). In order to arrive at utilitarianism, Rawls states that society must adopt an impartial spectator to make rational decisions for all. However, as Rawls claims, such an understanding misses the separateness of people, which means that one ideal man should decide for the benefit of all; and therefore, people are fused into one. However, in Rawls system, as I will endeavor to explain in detail in the following sections of my thesis, people are accepted as individuals, and have the moral powers to consider their own conceptions of the good and they have a capacity to revise them.

It appears that the utilitarian understanding of justice has serious ethical limitations and problems.

As I argued above, different theories of justice have some limitations; however, I think a contractarian understanding of justice offers the most plausible solutions to the problems that are generated by different interests of various people in cases of distribution of resources and rights. Now, I will consider Rawls' theory of justice which is a contractarian theory.

In his theory of justice, Rawls puts forth the idea of Original Position (OP) for consideration. According to Rawls (1999), "in justice as fairness the original position of equality corresponds to the state of nature in the traditional theory of the social contract" (p. 11). In such a state of original position, people are rational and egoistic. Therefore, they would all like to follow their own interests. Also, they would all like to have rights, liberties and opportunities. However, since people are different from each other, their particular interests will also differ from each others' unavoidably. In order to refrain from such a chaos and in order to create a fair system for all, he produces the idea of "the Original Position with the Veil of Ignorance". He asserts such an idea, because in that situation people do not know to which social class they belong, their financial conditions, what their natural endowments are, and so on (ibid.). These situations are the situations which might create discriminations among people. However, by such an ignorance about themselves in the original position with the veil of ignorance, people would not be able to know what would be for their own interests, or what would serve their particular interests. Therefore, people in that situation would have to make decisions that would protect rights and interests of every individual as a society. This is the core idea of Rawls' theory of justice. The veil of ignorance "ensures that no one is advantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances" (ibid.). This also shows where the term 'fairness' comes from and takes its place in the name of the theory. Since in the original

position with the veil of ignorance, people are free and rational and are equal in the sense that they are all ignorant about themselves, the agreements they reach in such an initial state are fair (ibid.; also Rawls, 1999, p.15). They reach an agreement about the two principles of justice with each other under the conditions that are fair to all (Rawls, 2001, p. 15).

Rawls' theory is an individualistic one in the sense that it has to reply to the needs of individuals, only then moral and political policies could be justified (Audi, 1999, p. 183). The theory of justice as fairness tries to balance the inequalities between people in their abilities and circumstances. Justice as fairness allows inequalities in distribution of wealth in society, only if they are in favor of the least advantaged ones in the society; this is the Difference Principle. Due to natural endowments that people are born with and family income, people's prospects in life in relation with their economical and political success are influenced. However, according to this theory, these are undeserved advantages. Therefore, by such a theory of justice, certain policies must be held by the government in order to provide a fair equality of opportunity for all. The importance of the theory lies in the idea that the theory of justice as fairness pays special attention to those who are disadvantaged in the society and this satisfies our sense of justice.

Against theory of justice as fairness, it can be argued that this theory is not able to satisfy persons' all interests and wants, including the wants which can be counted as luxurious. In theory of justice as fairness, Rawls offers the idea of primary goods, which I will endeavour to explain in more detail in the following sections. Primary goods are required for all citizens in order to fully develop themselves. For Rawls, these goods must be taken as objective needs which are required by citizens as free and equal persons. All these goods are for the citizens in order to become full cooperating members of society. Opponents of this theory questions whether a fair distribution of those primary goods can be satisfactory to satisfy people living in that society. According to Rawls, if the system did not guarantee

primary goods, then people would be unsatisfied, since what is required for an individual to become aware of herself and her potentials can be achieved by primary goods. Only then will one be able to discover one's self-respect, and then one will be able to reach one's wants and preferences. What the society must do is to guarantee the fair distribution of these goods. Moreover, according to Rawls, since people have a capacity for a conception of the good and since they have a capacity to revise it, then in line with the opportunities open to someone, one is able to pursue one's own conception of the good. Therefore, it is one's own choice to follow a luxury preference or want, and to afford one's preference which may be counted as luxurious is not a responsibility of the society.

Although Rawls' theory is a very good theory and hard to defeat, I think Rawls' theory misses one point. It does not give an answer to patients who have diabetics, cancer or who are disabled.² These persons are also the worst-off people in the society. In this thesis, I examine extensively the claim that since health conditions of people have a great impact on their range of opportunities, health care must be considered as something very important, as Norman Daniels also argues. I also argue that since there is the fact of social determinants of health, how much individuals can be held responsible for maintaining and restoring their health and how the distribution of resources should be made when people *are thought to* risk their own health.

2. 2. 1. Rawls' Conception of Society

In his book *A Theory of Justice*, Rawls (1999) defines society as “a more or less self-sufficient association of persons who in their relations to one another recognize certain rules of conduct as binding and who for the

² This is also pointed out by Frank Michelman (1975).

most part act in accordance with them” (p. 4). Those rules of conduct specifies a system of cooperation advancing the benefits of all (ibid.). However, since people who take in part in that society are different individuals, their needs and interests are different. Therefore, certain social arrangements are required in order to distribute the benefits of the society among those who take part in the society. A set of principles are chosen in order to choose the most suitable social arrangements determining the distribution of advantages (ibid.). “These principles are the principles of social justice: they provide a way of assigning rights and duties in the basic institutions of society and they define the appropriate distribuiton of the benefits and burdens of social cooperation” (ibid.).

In his book *Justice as Fairness*, Rawls presents and defends his political philosophy. For him, political philosophy is a “work of reason ... specifying principles to identify reasonable and rational ends of those various kinds [various different ends of individuals], and ... showing how those ends can cohere within a well-articulated conception of a just and reasonable society” (p. 3). So, it can be said that “political philosophy may contribute to how people think of their political and social institutions as a whole, and their basic aims and purposes as a society with a history ... as opposed to their aims and purposes as individuals, or as members of families and associations” (p. 2).

Rawls’ theory rests on some ideas, which he calls “fundamental intuitive ideas”. These are the idea of a “society as a fair system of cooperation”, the idea of “a well-ordered society”, and the idea of “citizens as free and equal moral persons”. In the following piece, we can see how Rawls (2001) describes the fundamental intuitive ideas:

Those [ideas] we use to organize and to give structure to justice as fairness ... [are] fundamental ideas. The most fundamental idea ... is the idea of society as a fair system of social cooperation over time from one generation to the next (*Theory*, §1:4)....

This central idea is worked out in conjunction with two companion fundamental ideas.... the idea of citizens (those engaged in cooperation) as free and equal persons (§7); and the idea of a well-ordered society, that is, a society effectively regulated by a public conception of justice (§3). (p. 5)

Rawls' first fundamental idea has three elements (Brighouse, 2004, p. 33). First, when Rawls says "society as a fair system of cooperation", he wants to point to a coordination among cooperators, and for this coordination there are certain rules and procedures which are accepted by cooperators. Second, in this idea of society as a fair system of cooperation, he emphasizes reciprocity among persons, by which he means that every reasonable person should accept the fair terms of cooperation (Rawls, 2001, p. 15). Third, the cooperation is for all cooperators in order for them to follow their own good.

By "a well-ordered society", he means a society in which "(1) everyone accepts and knows that the others accept the same principles of justice, and (2) the basic social institutions generally satisfy and are generally known to satisfy these principles" (Rawls, 1999, p. 4). When we think about (1), we may not be able to grasp the idea of generally accepted and known principles of justice immediately. Rawls emphasizes that everyone has a conception of justice or a sense of justice, by which "they [men] understand the need for, and they are prepared to affirm, a characteristic set of principles for assigning basic rights and duties and for determining what they take to be the proper distribution of the benefits and burdens of social cooperation" (p. 5).

By (2), Rawls emphasizes that society's basic structure must fulfill the requirements of justice (Brighouse, 2004, p. 34). "[T]he basic structure of society is the way in which the main political and social institutions of society fit together into one system of social cooperation, and the way they assign basic rights and duties and regulate the division of advantages that arises from social cooperation over time (*Theory*, §2: 6)" (Rawls, 2001, p. 10). Furthermore, basic structure of society consists of "the political

constitution with an independent judiciary, the legally recognized forms of property, and the structure of the economy ... as well as the family in some form” (ibid.). The basic structure is taken as the primary subject of political and social justice (Theory, §2) (ibid.). “[B]ecause the effects of the basic structure on citizens’ aims, aspirations, and character, as well as on their opportunities and their ability to take advantage of them, are pervasive and present from the beginning of life (§§15-16)” (ibid.).

By his third fundamental intuitive idea, Rawls construes citizens as free and equal moral persons. In order for citizens to be considered as equal, they must have a capacity for a sense of justice and must have a capacity for the conception of the good, both of which are moral powers of persons (p.18). As Rawls claims, with the capacity of a sense of justice, persons can limit their behaviours up to a point described by “the legitimate interests” of other persons in the society (Brighouse, 2004, p. 34).

Citizens are free in the sense that everyone has a conception of the good, and also they are self-authenticating sources of valid claims in society (Rawls, 2001, pp. 21-23). It is in their moral power to revise, change their conception of the good on reasonable and rational grounds (p. 21). Here, it should be clarified what Rawls means by the “conception of the good”. By “the good”, he implies the personal interests and final ends of each person individually. “Such a conception is an ordered family of final ends and aims which specifies a person’s conception of what is of value in human life or, alternatively, of what is regarded as a fully worthwhile life” (p. 19). By regarding themselves as self-authenticating sources of valid claims, “they regard themselves as being entitled to make claims on their institutions so as to advance their conceptions of the good (provided these conceptions fall within the range permitted by the public conception of justice)” (p. 23). In pursuing their own good, persons have to take into account others’ interests also which can be considered as limits set by justice. It also has to be emphasized here that persons are free as far as they see themselves as

independent in pursuing their own good (Brighouse, 2004, p. 36). I should point that our views can change over time slowly or rapidly, therefore our interests may also change; however, such a change does not imply a change in our public or legal identity. Therefore, society's attitude towards us should be the same. (For instance, I can become a member of another religious group which may be a minority group, but I have to be treated in the same way by the society, and I should have the same rights as I had before.)

2. 2. 2. The Original Position and the Importance of the Veil of Ignorance

According to Rawls (2001), we need to be in the Original Position in order to achieve the principles of justice. The Original Position is “set up as a situation that is fair to the parties as free and equal, and as properly informed and rational” (p. 16). Since the parties are equal, any agreement made by the citizens' representatives are fair (ibid.). “Since the content of the agreement concerns the principles of justice for the basic structure, the agreement in the original position specifies the fair terms of social cooperation between citizens regarded as such persons. Hence the name: justice as fairness” (ibid.).

Since people are rational and egoistic in this hypothetical Original Position, they all would like to have liberties, rights and opportunities. Although “citizens cannot agree on any moral authority” which derives from pluralism (p. 15), some conditions must be provided in order for there to be a fair system. This can only be done by “the Original Position with the Veil of Ignorance”, as Rawls puts it. With the “veil of ignorance”, in the original position people, who are the representatives of the citizens, would not be aware of their status in the society, although they have general knowledge about the society in which they live. They would not know whether they

themselves or the citizens they represent are rich or poor, white or black, old or young, etc. This should be so in order to “situate free and equal persons fairly and ... not [to] permit some to have unfair bargaining advantages over others” (ibid).

Rawls sees the Original Position as a device of representation (p. 17). The Original Position models two things: (i) fair conditions of agreement between citizens as free and equal, (ii) appropriate restrictions on reasons (ibid.). As being equal and free, people would agree the fair terms of cooperation, as I have explained in the part above. By the appropriate restrictions on reasons, parties representing the citizens would accept “certain principles of political justice and reject others” (ibid.). Here, the importance of the veil of ignorance becomes obvious. It signifies the impartiality in choosing the principles (Brighouse, 2004, p. 40). Since the parties are not aware of the conceptions of the good of those whom they represent, they cannot choose the principles favoring their clients’ good only.

People, as rational agents, will try to obtain what their interests require or, in other words, they will look for the means to their final ends. However, since the most fundamental idea is “the idea of society as a fair system of cooperation over time from one generation to the next” (Rawls, 2001, p. 5), everyone in the society should reasonably accept the fair terms of social cooperation as every other accepts them as free and equal persons (p. 6). Because, “... social cooperation is guided by publicly recognized rules and procedures which those cooperating accept as appropriate to regulate their conduct” (p. 6). People give up, to a certain extent, their own interests and agree on a publicly recognized standard, only when they make this decision as free and equal. As a requirement of cooperation, all cooperators have to pursue their own conceptions of the good freely, and all reasonable persons can come to an agreement on the fair terms of cooperation if those terms are reciprocal. So, people must have the secure feeling of being equal and must have the confidence to be treated as the same. Those engaged in

cooperation would follow their own interests and would try to advance them. However, since there is the idea of reciprocity in fair terms of cooperation as it is specified above, there must be some limitations in following what those interests and final ends require. Otherwise, those who have more political power would rationally use this advantage in order to advance their own interests without considering others in the society, which would be rational but, unreasonable (p. 7). “[Since] persons engaged in cooperation and situated as equals in relevant respects ... reasonable persons are ready to propose, or to acknowledge when proposed by others, the principles needed to specify what can be seen by all as fair terms of cooperation” (pp. 6-7). It is reasonable to honor these principles, since everyone accepts them. This is for the mutual benefit of everyone in the society. “Common sense views the reasonable but not, in general, the rational as a moral idea involving moral sensibility” (p. 7).

In order to achieve the principles of justice in the Original Position and the desired restrictions which are required by those principles, all people should be behind the veil of ignorance. Because, only then do people have the confidence that others, too, do not have such an information about each other's positions in society, such as wealth conditions, social status, etc. Rawls (1999) wants “to make vivid ourselves the restrictions that it seems reasonable to impose on arguments for principles of justice Thus it seems reasonable and generally acceptable that no one should be advantaged or disadvantaged by natural fortune or social circumstances in the choice of principles” (p 16). Rawls is against a theory of justice based on the notion of desert by which he means that no one should be advantaged or disadvantaged by natural fortune when the principles of justice are chosen. Because, first, “we simply do not deserve our place in the distribution of natural endowments.” (Brighouse, 2004, p. 31). However, here, it can be claimed

then that no one deserves to be rewarded for her individual successes³. But, this claim can be answered by claiming that “[t]he environment determines how well rewarded the talent will be” (p. 32). Let me give an example. Suppose a professional golf player is not appreciated as much as she deserves or may not earn so much money from the matches she wins, if golf is not a very popular sport in the country in which she plays. On the other hand, if that player were playing golf in a country in which golf is very popular, then she would be able to get what she deserves in terms of appreciation or money. Therefore, we can claim that having talents or natural endowments does not mean that one deserves them, but one can be expected to be appreciated for her talents. But, being rewarded for individual successes is not what Rawls wants to signify here. Ignoring natural endowments when choosing the principles of justice shows the significance of the veil of ignorance; because, by this way, no one will be advantageous over the other by her natural endowments when choosing the principles of justice. However, when we choose the principles of justice behind a veil of ignorance and when the basic institutions are governed by those principles, then it is up to individual to use her talents appropriately to be rewarded. And, second, such a theory of justice based on such a notion of desert may not be acceptable by reasonable agents. “We should, Rawls thinks, think of people deserving whatever it is justice says they should have, rather than thinking of justice as having to give people what they deserve.” (p. 33).

Some objections can be directed to original position. It can be asked whether it is possible for one to be in such a hypothetical situation such as being behind a veil of ignorance in the original position. However, the question must not be this. Rather, we have to think about what people would agree to if they were behind a veil of ignorance (p. 43). Original position is a useful device for representation, as I mentioned above. It helps to find out

³ Here, it should be noted that when we use the verb “to deserve”, we usually think of, for instance, how much one should earn when she shows a successful performance in a job.

which principles of justice are acceptable, justifiable and agreeable to all, independently and impartially.

It can be argued that when one is behind the veil of ignorance, one does not need to be reasonable, but rational only. Since, by being rational, one will obviously make decisions for one's own advantage or for one's best. However, since one is in the original position, one will not know where one stands in the society and how one's condition is. Therefore, one will automatically make the decision that would benefit those in the worst conditions. Because, that person can be the one among those who are the least-advantaged in the society. Then, one wonders why we need to be reasonable, if we can arrive at the same decisions by being rational. The answer to this question may be simple. The original position is a thought experiment (Rawls, 2001, p. 17) which helps us to recognize and pick up the principles that would be reasonable and would be beneficial to all, since persons are free and equal in that initial condition. In order to start such an experiment, the individuals involved must be reasonable. Otherwise, simply as a rational agent, one would not accept to take part in that thought experiment in the light of her own interests. "Together with the veil of ignorance, these conditions [that all parties are equal in the Original Position and, therefore, have the same rights to choose the principles] define the principles of justice as those which rational persons concerned to advance their interests would consent to as equals when none are known to be advantaged or disadvantaged by social and natural contingencies" (Rawls, 1999, p. 17).

As I have mentioned above, original position is a device of representation which models the fair conditions of agreement for the fair terms of social cooperation and the reasonable restrictions on reasons (Rawls, 2001, p. 80). There are rational persons in the parties having their own interests by representing their groups. Although they have different interests and desires, they arrive at an agreement with each other. In the argument

from the original position, “we impose on the parties certain reasonable conditions as seen in the symmetry of their situation with respect to one another and the limits of their knowledge (the veil of ignorance)” (p. 81). So, according to the argument from the original position, we model rational representatives of citizens who are free and equal. The parties are constrained in the original position by reasonable conditions in order not to reach a rational agreement in which they try to advance only the good of those they represent (p. 82). Therefore, as Rawls claims, “the reasonable has priority over the rational This priority expresses the priority of right” (ibid.).

The parties must protect the interests of those they represent. This does not mean that they are selfish. Because with those fundamental interests people are able to develop and exercise their two moral powers and are in a pursuit of their own conceptions of the good in fair terms with others (pp. 84-85). The parties in the original position reach an agreement with each other by adopting some principles. This can be done by the veil of ignorance. It “achieves this result by limiting the parties to the same body of general facts ... and to the same information about the general circumstances of society” (pp. 86-87). “[T]he veil of ignorance removes differences in bargaining advantages”; therefore, parties are symmetrically situated in the original position (p. 87), and they represent citizens who are free and equal. By this situation of the parties, “the original position respects the basic precept of formal equality ... those similar in all relevant respects are to be treated similarly” (ibid.). Only then the original position is said to be fair.

However, we should ask the following questions: since the veil of ignorance prevents the parties to know what the goods of whom they represent, then which goods are to be pursued by the parties? Also, how would the parties be able to know how to distribute these goods? According to Rawls, the answer is primary goods which “are identified by asking which things are generally necessary as social conditions and all-purpose means to

enable citizens, regarded as free and equal, adequately to develop and fully exercise their two moral powers, and to pursue their determinate conceptions of the good” (p. 88). Primary goods are the goods “that people would have reason to care about having regardless of whatever else they had reason to care about” (Brighouse, 2004, p. 44). I examine this in the following sections in more detail.

2. 2. 3. Two Principles of Justice

Justice as fairness is a form of political liberalism, because people are born into a society and exit only by death. Also, political power is a coercive power but it should be noted that in justice as fairness it is the power of citizens who are free and equal as a collective body in a constitutional regime (Rawls, 2001, p. 40). But, let us remember that there is reasonable pluralism in such a society, so how can one expect the use of such a coercive power over the other? For Rawls, the answer lies in the key point that the conception of justice must be a political one. Only then one can say, “political power is legitimate only when it is exercised in accordance with a constitution (written or unwritten) the essentials of which all citizens, as reasonable and rational, can endorse in the light of their common human reason” (p. 41).

According to Rawls (2001), in justice as fairness, political and social institutions and the way they work and unify as a system of cooperation are the primary subjects of political justice (§4) (pp. 39-40). He claims to be so, because the basic structure of a society, the arrangements of social institutions, the distributions of goods may influence social and economic inequalities, and consequently the lives of the people in the society, in the sense that the persons have to live their lives according to the principles chosen by the parties in the original position. People are born into a society

and they lead their lives within the institutions of the basic structure. Rawls claims that "... the fundamental social and economic inequalities are the differences in citizens' life-prospects (their prospects over a complete life) as these are affected by such things as their social class of origin, their native endowments, their opportunities for education, and their good or ill fortune over the course of life (§16)" (ibid.). If this is so, then one may ask as to how these inequalities and these differences can be accepted by all citizens if they are accepted as free and equal, and by what principles these differences and inequalities can be made legitimized. The answer is simple: by the following two principles of justice:

- (a) Each person has the same infeasible claim to a fully adequate schema of equal basic liberties, which scheme is compatible with the same scheme of liberties for all; and
- (b) Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged members of society (the difference principle). (pp-42-43)

Although it is quite obvious in the quotation above, it should be emphasized that fair equality of opportunity is prior to the difference principle. In the original position, since the parties behind a veil of ignorance do not know what their clients' conceptions of the good are, parties must choose principles by taking into consideration the equality of opportunity principle as prior to the difference principle. Since they do not know what their clients' conceptions of the good are, they have to provide a safe ground for their clients in order for them to exercise their conceptions of the good. In order to do this, first, the conditions to pursue our conceptions of the good must be provided. Wealth and income are merely means for persons to

pursue their conceptions of the good, and therefore, it is irrational to trade opportunities for resources (Brighouse, 2004, p. 58).

It can also be maintained that the liberty principle is prior to equality of opportunity principle. Rawls (2001) claims that all should have a fair chance to attain public offices and social positions, and this is required by fair equality of opportunity (p. 43). However, without basic liberties, one is not able to discover what her talents and endowments are. Also, education has a big impact on people's life prospects. Therefore, everyone in the society should have the right to have education to discover what their talents and endowments are independently of the family income. As Rawls argues, people, who are from different social classes into which they were born, have the same chance to attain these public offices or social positions but have the same abilities and natural endowments.

To accomplish its aims, certain requirements must be imposed in the basic structure ... [a] free market system must be set within a framework of political and legal institutions that adjust the longrun trend of economic forces so as to prevent excessive concentrations of property and wealth, especially those likely to lead political domination. Society must also establish, among other things, equal opportunities of education for all regardless of family income (§15). (ibid.)

According to Rawls, the equal basic liberties, freedom of thought, freedom of association are all guaranteed by a constitution. "The equal political liberties and freedom of thought enable citizens to develop and exercise [their two moral] powers in judging the justice of the basic structure of society and its policies ... that liberty of conscience and freedom of association enable citizens to develop and exercise their moral powers in forming and revising and in rationally pursuing ... their conceptions of the good" (p. 45). So, from the things have been said, it can be claimed that such basic rights and liberties help us exercise and develop our two moral powers which are required to become a fully cooperating member of the society.

Rawls states that people's lives and their successes are affected by many factors, and I think it is one of the core ideas constituting the aim of this thesis. His theory of justice as fairness "focuses on inequalities in citizens' life-prospects" (p. 55). These prospects of citizens are affected by three kinds of contingency which are:

- (a) their social class of origin: the class into which they are born and develop before the age of reason;
- (b) their native endowments (as opposed to their realized endowments); and their opportunities to develop these endowments as affected by their social class of origin;
- (c) their good or ill fortune, or good or bad luck, over the course of life (how they are affected by illness and accident; and, say, by periods of involuntary unemployment and regional economic decline). (ibid.)

These points are important because, Rawls here emphasizes that because of such contingencies, inequalities occur between people. And these inequalities do not depend on the choices of individuals' ways of lives, but on their chances. For example, nobody chooses to be born into a poor family, or nobody chooses to have a bad accident which will influence her life prospect. Justice as fairness sheds light on this point, and emphasizes that if those inequalities are due to good or ill fortune, then, as a cooperative society, some inequalities can be accepted in so far as they are to the advantage of the least-advantaged members of the society. This is the difference principle, as Rawls calls it. Rawls states "[t]he difference principle is a principle of reciprocity" (p. 64). He emphasizes this by claiming that inequalities are acceptable only if they promote the well being of the disadvantaged as well as ourselves. "The difference principle requires however great the inequalities in wealth and income may be, and however willing people are to work to earn their great shares of output, existing inequalities must contribute effectively to the benefit of the least advantaged" (ibid.).

So, even in a well-ordered society, some inequalities occur due to some probabilities affecting our success in life. These contingencies or accidents seriously affecting citizens' life prospects are not avoidable; therefore, the basic structure should arrange its institutions to distribute goods by taking these facts into account. We must not ignore the inequalities in people's prospects in life arising from these contingencies if we want to take seriously the idea of society as a fair system of cooperation between citizens as free and equal (p. 56).

It can be asked here how people will arrive at the conception that all are free and equal. Rawls states that an education making people aware of themselves should be given by the basic structure (ibid.). The basic structure "comprises social institutions within which human beings may develop their moral powers and become fully cooperating members of a society of free and equal citizens" (p. 57). Rawls also states that the basic structure "also answers to the public role of educating citizens to a conception of themselves as free and equal; and, when properly regulated, it encourages in them attitudes of optimism and confidence in the future, and a sense of being treated fairly in view of the public principles which are seen as effectively regulating economic and social inequalities" (ibid.). This is important because, when there is inequality in wealth and income, and if the people have a sense of not being treated equally by the government, then the cohesion between people seems to be eroded, and it leads to a lower participation in political activity (Daniels, 2002, p. 8). And like a vicious circle, since there is less participation in political activity, there will be less responsibility of the government to respond to the needs of the worst-off.

People, as being free and equal, will obviously desire and want many things in order to achieve their final ends. According to Rawls (2001), primary goods are "various social conditions and all-purpose means that are generally necessary to enable citizens adequately to develop and fully exercise their two moral powers, and to pursue their determinate conceptions

of the good” (p. 57). When he says ‘citizens’, he emphasizes that these are the persons seen in the light of political conception. “These [primary] goods are things citizens need as free and equal persons living a complete life; they are not things it is simply rational to want or desire” (p. 58). It is clear here that Rawls uses the political conception and not a moral doctrine to define primary goods. “While the list of primary goods rests in part on the general facts and requirements of social life, it does so only together with a political conception of the person free and equal, endowed with the moral powers, and capable of being a fully cooperating member of society” (ibid.).

In the original position, parties are to decide the principles. In order to agree on which principles should be adopted, they have to consider their clients’ conceptions of the good. However, since they are behind a veil of ignorance, they do not know what the conceptions of the good of the people they represent. So, they do not know what they really have to care about. Therefore, the parties must pursue some goods which are cared by all people in the society independently and impartially. These are, as what Rawls calls them, primary goods. Primary goods are “goods that people would have reason to care about having regardless of whatever else they had reason to care about” (Brighouse, 2004, p. 44). Rawls (2001) distinguishes five kinds of goods; “the basic rights and liberties”, “freedom of movement and free choice of occupation against a background of diverse opportunities”, “powers and prerogatives of offices and positions of authority and responsibility”, “income and wealth”, “the social basis of self-respect” (pp. 58-59). All these goods are for the citizens in order to become a fully cooperating members of society.

Primary goods, according to Rawls, must be taken as objective needs which are required by citizens as free and equal persons. Every citizen has a claim to attain social resources, and since there is pluralism, there may arise different conceptions of the good. However, Rawls gives the idea of public conception of justice in his justice as fairness in order to refrain from the

various claims of citizens arising from different desires, wants and aims. This is something required for social unity (p. 151).

2. 2. 4. The Least-Advantaged Members of Society

According to Rawls, every person in the society is fully participating members, by which he assumes fully functioning people over time (Daniels, 2002, p. 3). Therefore, none of the parties in his original position represents those who are ill or disabled. In a just society, assuming a healthy population, he argued that all should have equal basic rights and liberties, the right to political participation of people must be guaranteed equally, equality of opportunity must be protected, and inequalities are permitted as far as they are to the benefit of the least advantaged members of the society. If these are provided, then people would trust the government in the sense that they are all treated equally; and therefore, people will have the reasonable confidence that they will show the respect to each other which is required for our self-worth (p. 6). Equal basic liberties and rights, equality of opportunity and fair distribution of income and wealth are required for the fifth primary good, which is self-respect. Without self-respect, one may not be able to recognize his talents, endowments, and therefore, her opportunities. Furthermore, one may not be able to become a full participating member of the society unless her self-respect is maintained.

“In a well-ordered society where all citizens’ equal basic rights and liberties and fair opportunities are secure, the least advantaged are those belonging to the income class with the lowest expectations” (Rawls, 2001, p. 59). What Rawls means by ‘expectations’ is people’s life-prospects. The difference principle is about those differences which are “citizens’ (reasonable) expectations of primary goods over a complete life” (ibid.) According to Rawls, difference principle applies to differences in people’s

income and wealth in order to arrange those inequalities properly; for the benefit of the least advantaged members of society. What Rawls means is that “we are to compare schemes of cooperation by seeing how well off the least advantaged are under each scheme, and then to select the scheme under which the least advantaged are better off than they are under any other scheme” (pp. 59-60).

The theory as a whole reflects a degree of risk aversion, imputing to representative persons a structured set of priorities under which the question of generally amplifying one’s income simply is not reached until adequate assurance has been made for what one specifically needs in order that his basic rights, liberties, and opportunities may be effectively enjoyed, and his self-respect maintained (Michelman, 1975, p. 347).

In justice as fairness, Rawls does not have the utilitarian view in applying the principles of justice. He does not state the citizen’s overall happiness by the fulfillment of their rational preferences or desires. Rawls (2001) does not consider the good of the people personally, but he considers it in a political conception as people fully cooperating members of society (p. 60). He does this in order to achieve “a public basis of justification supported by an overlapping consensus” (ibid.). The difference principle does not appeal to individual or groups’ interests, but it concerns all the members of society in the sense that a principle of political justice must do (p. 71).

The difference principle requires that however great the inequalities in wealth and income may be, and however willing people are to work to earn their greater shares of output, existing inequalities must contribute effectively to the benefit of the least advantaged. (p. 64)

If this is not so, then inequalities are not permissible. The difference principle involves the idea of reciprocity. Because, as Rawls states, the

difference principle requires that “the existing inequalities are to fulfill the condition of benefiting others as well as ourselves” (ibid.). Therefore, the difference principle helps to maximize the expectations of the least advantaged members of the society. The least advantaged members of the society also have the equal basic liberties and fair equality of opportunity; however, they have the lowest income and wealth. Furthermore, sometimes people are given lesser opportunities or have unequal basic rights due to their natural characteristics. In a well-ordered society, in order to avoid the distinctions and unequal treatments which are sometimes dependent on race and gender (which are natural characteristics and cannot be changed) equal basic liberties and fair equality of opportunity must always be protected (pp. 65-66).

Rawls asks whether there can be a possible limit on the ratio between the shares of the more and less advantaged (p. 68). According to Rawls, it is impossible to define such limits. Because it is not observable “whether those receiving these shares have made an appropriate contribution to the good of others by training and educating their native endowments and putting them to work within a fair system of social cooperation” (ibid.). It is impossible to tell how the shares are made, whether the distribution is made in a system of cooperation satisfying the difference principle. However, “[i]n a society well-ordered by the two principles of justice, we hope that the observable features of the distributions that result fall in a range where they do not seem unjust” (ibid.). Rawls claims that the simplest limit is to have the strict equality in all social goods. From this, it may be claimed that this is an egalitarian approach. However, it should be noted here that the difference principle is not an egalitarian principle because “it recognizes the need for inequalities in social and economic organization” (ibid.).

Rawls rejects equality as an interpretation of ‘everyone’s advantage’. Let’s think of ourselves as the partner representing our clients, so we are in

the original position. We are considering two principles: the principle of equality and the difference principle.

Under the Difference Principle there are two possibilities for your client: she might have been either among the worst off, or among the group better off than the worst off. But by definition, under the Difference Principle every position is either better off than every position under strict equality, or every position is identical to every position under strict equality. (Brighouse. 2004, p. 53)

Under the principle of equality, she will be worse off than in any condition she will be under Difference Principle. The representatives know that people are different in terms of their interests and preferences. Even by the principles chosen under the principle of equality, the least-advantaged may not be satisfied by what she gets. However, Difference Principle takes into account the differences in individuals' needs and preferences. Being aware of the fact that people may differ in their preferences, wants and needs, the representatives would prefer to choose the principles which would be to the advantage of even those who are counted as the least-advantaged. As I will explain it in the following section, the parties should select the principles that will be advantageous even for the worst off members, since their clients may be in that group. The reason for preferring Difference Principle lies in the fact that the situation for the worst off group should be made as good as possible. Therefore, we should prefer Difference Principle. It is somehow clear that the client is self-interested; she is not interested in how much others get. (Suppose our client lived under strict equality. Then she would probably think that she would be in a more advantageous group if the decisions were given under the Difference Principle.)

2. 2. 5. Contrasting Justice as Fairness with Utilitarian Approach

Justice as fairness takes the idea of society as “a fair system of social cooperation between citizens regarded as free and equal” (Rawls, 2001, p. 95). Such an idea of society includes the ideas of reciprocity and equality (p. 96). However, utilitarianism takes the idea of society as “a social system organized so as to produce the most good summed over all its members, where this good is a complete good specified by a comprehensive doctrine” (p. 95). In the utilitarian approach, the important issue is to maximize the sum of social welfare (p. 96). Justice as fairness cannot defend utilitarian approaches because “the principle of utility may sometimes permit or else require the restriction or suppression of the rights and liberties of some for the sake of a greater aggregate of social well-being” (p. 102). In order to make this claim clearer, we have to define what Rawls means by ‘maximin rule’ and ‘the guaranteeable level’.

In Rawls’ theory, maximin rule “tells us to identify the worst outcome of each available alternative and then to adopt the alternative whose worst outcome is better than the worst outcomes of all the other alternatives” (p. 97). Rawls states that maximin rule by which the fundamental interests of the citizens being represented must be protected by the parties. Therefore, the parties have to consider the worst conditions with the best outcome. So the parties consider many alternatives with the worst outcomes, and they choose the one with the better possible outcome among the other alternative’s worst possible outcomes. This can be explained more clearly by giving examples of risk takers and risk aversioners. In the original position, parties can either be risk aversioners or risk takers. If the parties were risk takers, then they would accept the principles offering an advantage to those who are in the more advantaged groups in the society, although they have a slight chance of being one of them. On the other hand, if the parties are risk

aversioners, then they would prefer to choose the principles offering equal outcomes in order to ensure themselves and those they represent to be safe (Brighouse, 2004, p. 42).

However, we need the guaranteeable level here. The importance of guaranteeable level is crucial in justice as fairness. The guaranteeable level is “the situation of the least-advantaged members of the well-ordered society that results from the full realization of the two principles of justice” (Rawls, 2001, p. 99). If the chosen alternative is below the guaranteeable level, then such an alternative cannot be acceptable. Because, the ones below the guaranteeable level might lead to conditions jeopardizing the rights and liberties of individuals. The parties have to do so (have to consider all these steps) since these are the conditions obtained in the original position (p. 98). Maximin rule is a useful device in the original position, since it helps parties to recognize what the fundamental interests really are (p. 99). The utilitarian approach misses this point made obvious by the guaranteeable level. Being governed by the maximin principle helps pursuing the rational good or the fulfillment of interests. Utilitarian approach, in the name of aggregate utility, might suppress some of the rights and liberties; while, justice as fairness protects those rights and liberties by taking into account the guaranteeable level when considering the maximin rule. Therefore, only in justice as fairness, which originated from a social contract tradition, the parties can “act responsibly as trustees: that is, effectively protect the fundamental interests of the person each represents, and at the same time make sure to avoid possibilities the realization of which would be altogether intolerable” (p. 102).

Because of these reasons, Rawls claims that “the two principles of justice must be selected over the principle of utility, for they are the only alternative that guarantees the fundamental interests of citizens as free and equal” (p. 103). The two principles of justice “protect the basic rights and liberties”, and also they “provide an adequate complement of the primary

goods required for exercising and enjoying those freedoms” (p. 104). The two principles of justice guarantees the equal basic liberties (p. 115).

[B]asic institutions should encourage the cooperative virtues of political life: the virtues of reasonableness and a sense of fairness, and of a spirit of compromise and a readiness to meet others halfway. These virtues underwrite the willingness if not the desire to cooperate with others on terms that all can publicly accept as fair on a footing of equality and mutual respect. (p. 116)

According to Rawls, the principle of utility lacks the idea of reciprocity, while the difference principle has it (p. 117). “For as a principle of reciprocity, the difference principle rests on our disposition to respond in kind to what others do for (or to) us; while the utility principle puts more weight on what is considerably weaker disposition, that of sympathy, or better, our capacity for identification with the interests and concerns of others” (p. 127). He states this by showing how the principle of average utility fails when it is compared to the difference principle. He asks what happens if the principle of average utility substitutes with the difference principle (p. 120). Then, every party will insist on some insurances; such as, a social minimum. So, the basic structure will be arranged in order to maximize average utility by guaranteeing the equal basic liberties and fair equality of opportunity and by maintaining a social minimum. This is the principle of restricted utility (ibid.). However, as Rawls states, this principle has not got the idea of reciprocity (p. 122). “[T]he difference principle requires a minimum that ... maximizes the life-prospects of the least-advantaged over time”, but principle of restricted utility cannot, since its minimum is vague (p. 129). In a well-ordered society, the more advantaged would not violate the terms of cooperation. Because, all citizens know the public political conception which is the basic institutions are so arranged that people are accepted as free and equal, and they are in a mutual advantageous social cooperation (p. 125). Furthermore, the more advantaged would see

themselves as having natural endowments and good fortunes, and the basic structure offers them to develop their situations and opportunities only when they do so in ways improving the situations of others as well (p. 126). This is the idea of reciprocity in the difference principle. Also, with the difference principle's effect, there is a mutual trust between citizens; bargaining advantages would not be used against least-advantaged members (ibid.).

[T]he difference principle specifies a social minimum derived from an idea of reciprocity. This covers at least the basic needs essential to a decent life They [Citizens] ... think of distributive justice as regulating economic and social inequalities in life-prospects, inequalities affected by one's social class of origin, native endowments, and good fortune over the course of life. (p. 130)

CHAPTER 3

HEALTH

3. 1. What is Health?

Defining health may sound so easy at first sight; however, when one looks closer at the issue, soon one will find that it is not so easy to define as it seems to be. Health can be defined in many ways; but, basically, it can be defined as a condition of the body both as physically and mentally which influences the quality of life one leads.

Norman Daniels (1981), seems to accept a “biomedical” model of health according to which health is the absence of disease (p. 155). This definition seems to be too simple; however, it accounts for many complicated issues. This model requires a definition of disease which is what lies beyond the scope of the normal functioning. But, what is the scope of normal functioning? Humans are social animals; therefore, an abnormality related to our normal functioning (whatever it may be) might be accepted as a disease which influences our lives. So, it also requires that disease be normative, which means that if one does not comply with social norms, then she is unhealthy or ill. For example, if a man does not want to work to earn money in order to support his family, then he must be considered ill or unhealthy. Because, from a very narrow point of view, a man’s social function is to support his family by earning money to give his wife and kids a life to lead. Daniels is well aware of these problems; therefore, he proposes the “modified biomedical model” which presents a narrower definition of health and disease (p. 157). For example, such an account does not see an abnormality in some part of the body as a disease or health problem, unless the treatment will help the patient lead her normal life again and unless that part of the body will

function well again (e.g. an operation on the chin to enable one to chew better.)

I think reducing health to normal functioning is incomplete. I prefer the definition of health given by the World Health Organization (WHO): “[h]ealth is a state of complete physical, mental, and social well-being, and not merely the absence of disease or infirmity” (2006). In this definition, what sounds disturbing is the “complete well-being” condition. It might be claimed that the adjective ‘complete’ is ambiguous here, and the definition of health is somehow idealized in a way that it can never be achieved. Therefore, no one can be healthy by this definition, because nobody would be able to have that condition of complete social condition of well-being. However, what is emphasized in this definition is that there are many social determinants of health. Although biomedical model may sound more objective, there is a crucial point in the definition given by WHO: an individual cannot be held solely responsible for her health conditions. There are many external factors that influence the health of a person which the person cannot do anything about them. Such external factors can only be reduced by policies of the government which I will clarify in much greater detail later as the relation between those external factors and the way they influence the health of individuals by the policies held by the government. Although Daniels holds the modified biomedical model, he also signifies the importance of social determinants of health in his 2004 article (pp. 63-91).

3. 2. The Moral Relevance of Health

We consider health important. If we ask someone whether she considers health important or not, probably her answer will be “yes”. But why? Even if we have just a headache, we may find ourselves lying in the bed. When the problem is our health, we usually postpone our daily

activities whether they are important or not. Even when we catch cold, we must stay at home and rest. It might be claimed that illnesses have different rates of importance. For example, one may hold the idea that cancer is a much more serious illness than pneumonia, because the treatment of cancer is very difficult and usually does not end successfully. On the other hand, there are mental diseases which also influence a patient's and her relatives' lives. Usually mental diseases are not considered so severe if the patient does not have to stay at a mental hospital in order to get treatment. However, manic-depression, which is a serious mental illness and the patient does not have to stay at a hospital all the time, affect the patient and her relatives seriously. It should be asked here whether the degree of the illness is important when we are questioning about the quality of life. When we lose our health, we are needy and weak. These are some examples and there are many more illnesses; however, these examples shed light on an important point: bad health influences our lives in some way or other whether the disease is serious or not.

People have different preferences, desires and wants that require different needs with different urgencies. People's fulfillment of their needs may vary, and their preferences and the strength of their desires about how much they need them may differ. Due to different physiologies of individuals, some may need to drink more water during a day or may need to eat less. Some may prefer to drink mineral water rather than plain water. However, some needs do not vary from individual to individual. For instance, everyone needs to get the appropriate treatment in order to be healthy again. To obtain the treatment needed can be claimed to be a preference also; however, preferences sounds to be more subjective than some needs. If we are talking about the needs which do not vary from individual to individual, than this means that those needs have some objective value and are stronger than mere preferences.

Norman Daniels (1981) refers to T. M. Scanlon's 1975 article in order to emphasize the difference between preferences and needs. According to Daniels, the claim that all preferences are the things we need should be qualified (pp. 150-152). For example, if I say "I want a t-shirt", this can both mean a "want" and also a "need". If I say "I want that blue t-shirt", then this is more like a "want" with a preference: I prefer the *blue* one. However, I may not need to buy it, although I want it. Moreover, there are different individuals in a society and these individuals have different preferences, since they have different interests. Both Scanlon and Daniels emphasize that an objective criteria of well-being must be appealed to in moral contexts (Scanlon, 1975, p. 655; Daniels, 1981, p. 150). In order for one to have claims on resources, a reason must be given for showing the importance of one's needs over others' needs. Some needs would be weighted morally more important than other less important needs, and this could only be decided by an objective criterion of well-being. According to Scanlon, an objective criterion "provides a basis for appraisal of a person's level of well-being which is independent of that person's taste and interests, thus allowing for the possibility that such an appraisal could be correct even though it conflicted with the preferences of the individual in question, not only as he believes they are but even as they would be if rendered consistent, corrected for factual errors, etc" (p. 658). In issues of distributive justice which requires allocation of rights, goods, resources, what is of importance is the objectivity of such a criterion in deciding between different interests that can be sacrificed when we are concerned with moral claims (*ibid.*).

Daniels (1981) gives an example by which he shows the importance of objective criteria over subjective criteria (p. 151). He says that if a friend of mine gives me money in order for me to go to Brooklyn to smell pickles, because I need to reawaken my memories of childhood (that would be my

subjective criteria of well-being⁴), he may choose to help me out of duty; he would feel no obligation at all to lend me the money, that would be voluntary. I may need the same amount of money in order to see a dentist. Her reasons would not force my friend to lend me the money I want, about whether I have a stronger preference to go to Brooklyn rather than to a dentist. However, the picture changes when I apply this to a social welfare agency. That agency would not be interested in how much I prefer to go to Brooklyn, and how much I need to smell the pickles. But, the agency would only consider “objective criteria in assessing the importance of the request” (ibid.). It would be wrong to claim that the agency should be interested in how much *I* need the thing in question. It should be asked here where lies the importance of the request, and that is why we need an objective criteria.

As Daniels emphasizes, some needs are more relevant to moral consideration than some other needs when the issue is the distribution of resources. According to him, these needs are objectively ascribable and objectively important (p. 152). Objectively ascribable means that these needs can be ascribed to anyone independent of the strength of his other contrary preferences (ibid.). Needs are said to be objectively important, when “we attach a special weight to claims based on them in a variety of moral contexts, and we do so independently of the weight attached to these and competing claims by the relevant individuals” (ibid.).

Health care, including preventive, curative and rehabilitative services, can be claimed to be an objectively ascribable and objectively important need. From Daniels’ perspective, the needs which help us maintain our lives such as food, sheltering and clothing are the needs required to achieve normal functioning (p. 153). Since, according to Daniels, normal functioning is a definition of health, such a claim shows that health care is an objectively

⁴ According to Scanlon, a subjective criterion is “a criterion according to which the level of well-being enjoyed by a person in given material circumstances or the importance for that person of a given benefit or sacrifice is to be estimated by evaluating those material circumstances or that benefit or sacrifice solely from the point of view of that person’s tastes and interests” (1975, p. 656).

ascribable need. He also shows the objective importance of that need by maintaining the idea of normal functioning. Daniels claims that without our health, we may not be able to pursue our goals in the course of our lives and our range of opportunities may be decreased (p. 154). That claim sounds to be true. The objective importance of health care lies in this idea. People have the capacity to revise their conceptions of the good⁵ (Rawls, 2001, p. 19); and therefore, their happiness cannot be merely dependent on their goals which are influenced by a disease or poor health. Since we have such a capacity, we can always adjust our goals in relation to the situations we are in (Daniels, 1981, p.154). Although we have such a capacity, it can be said that poor health reduces our range of opportunities. Therefore, health care can still be claimed to be an objectively important need in the sense that it helps us to maintain our normal functioning *as high as it can be*; and therefore, it preserves our range of opportunities which is needed for us to construct our conceptions of the good (ibid., my emphasis).

Opponents of the idea of objective criteria may claim that subjective preferences are not taken into consideration and that forces us to question the autonomy of people. However, a consensus must be searched for when the policies of social institutions are criticized and justified morally (Scanlon, 1975, pp. 655 & 657), that is the reason why we need an objective criteria. If there is plurality among individuals' different tastes and interests, then the importance of different preferences could be questioned. The importance of an objective criteria of well-being lies in practical reasons, and objective criteria can give the best usable approximation to various interests (pp. 657-658). If there are competing interests, and if we try to achieve a moral judgement, then we need an objective criterion showing why the reasons are desirable for.

⁵ Here, we see a Rawlsian idea influencing Daniels. Daniels has expanded Rawls theory of justice to health issue successfully.

The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without the distinction of races, religion, political belief, economic or social condition. (*Constitution of the World Health Organization*, 2006)

I think the argument that health care is an objectively important need which generates moral weight greater than some other needs shows the importance and moral relevance of health care. Nevertheless I will provide further arguments that emphasize the moral relevance of health care by showing the relationship between rights, social obligations and needs.

We must begin with rights. It might be claimed that the concept of right arises when people decide to come together in order to live together within a society in which they would be safer. Social contract “system was invented to explain the way in which people, in positing jointly the modality of their own rights, formed civil society” (Rosmini, 1996, p. 57). This approach belongs to contract theories according to which, before deciding to come to an agreement, persons are in a state of nature in which they are unsafe and vulnerable to threats of others. In such a state, no one is aware of others’ rights and liberties. Everyone is egoistic and is in danger. In order to live more safely and without any fear, they decide to come to an agreement by which they will live together. The aim of this hypothetical agreement is to become aware of the rights and liberties others have as much as we do. In the contractarian agreement, there is an emphasis on the equal respect for each other which is a matter of morality (Freeman, 2006, p. 62). Only after such a realization of others’ rights and liberties, people come to accept that they are equal in a political sense⁶. In other words, “... rights are shields, ... The concept of rights is necessary, and it makes sense for an individual to

⁶ By saying equal in a political sense, I mean that people are protected by government’s laws and policies and are treated equally as citizens. For instance, everyone has a right to vote, and everyone’s vote is counted as one.

assert her rights, only in the face of others' actual or threatened aggression" (Smith, 1995, p. 23).

If everyone is equal, and if everyone accepts the hypothetical agreement in order to protect their rights and liberties, then individuals and the government have obligations or duties to protect those rights and liberties. This means "if x has a right to do R , then y has an obligation not to prevent x from doing R ". Because, if somebody has a right, then someone else has to have an obligation. If health care *is* a need and needs are the basis of some of our rights, then the government *ought to* provide adequate health care services. In this proposition, there might seem to be the philosophical problem of '*is* and *ought*'. However, because of the relation between rights and duties, here *is* implies an *ought*. "All rights implies duties" (p. 25), and some needs require to be protected and guaranteed by the law, and this requires rights.

"[A] right entails a correlative duty or obligation on the part of someone or some group to accord one a certain mode of treatment or to act in a certain way" (Blackstone, 1973, p. 63). However, it should be emphasized here that not all duties imply correlative duties. For instance, it might be said that we have obligations to animals and to babies; however, while we are aware of those obligations towards them, we do not expect them to have obligations towards us. Parents have obligations to look after their children, or have obligations to feed their babies, but babies do not have obligations to feed their parents. We have obligations to prevent harm done to animals, but animals do not have obligations to be loyal to us. What Blackstone wants to emphasize when he claims that rights entail correlative obligations is that "[o]ur moral duties in turn limit our liberties and the exercise of certain other rights" (DesJardins, 2006, p. 101). This means that even if my right to property entails me to pour toxic waste to my garden, such liberty is restricted when this act of mine causes harm to other which, in this case, poisons the underground water my neighbour uses (p. 102). When my

neighbour uses that water which has been polluted by my act, she would be poisoned or become sick. This means, when we think in a broader sense, our right to property is obstructed by my neighbour's right to life, which are both accepted as inalienable human rights.

At this point, some criticisms may appear. It might be argued that "rights entail only *negative* and not *positive* duties" (ibid.). By a negative duty, we mean the duties to refrain from acting; such as, a duty not to lie, a duty not to kill, etc. By a positive duty, on the other hand, we mean the duties to act; such as, to give money to charity. It can be claimed that I do not have a duty to protect or to beautify your environment, nor do I have a duty to afford the health care expenses you need out of my pocket. Although such a claim may be sound, the importance of emphasizing these rights shows the need for others' small basic correlative duties. Health care, being desirable, is a need and although one is not obliged to afford other's health care expenses, one is obliged not to prevent that person to get adequate health care that she needs. Moreover, one is obliged not to pollute the environment and its resources because of its impact on health, and therefore, on our interests and well-being. "By identifying something as a right, we are elevating it to the status of a centrally important human interest" (p. 103). Blackstone, in 1973, asks:

[i]f human rights, ... , are those rights which each human possesses in virtue of the fact that he is human and in virtue of the fact that those rights are essential in permitting him to live a human life (that is, in permitting him to fulfill his capacities as a rational and free being), then might not the right to a decent environment be properly categorized as such a human right? (p. 64)

We can ask the same question about health care. If good health has an impact on permitting someone to live a complete human life as it is defined above, then might not the right to health care be categorized as a human right? Our answer to this question should be affirmative. As being

free and rational beings, one of our fundamental interests is to fulfill our capacities and to pursue our interests and goals, and without our health we cannot do these. If, as Locke signifies, life, liberty and property are the rights that are inalienable, then health care, which can be included in a more comprehensive right, such as right to life and has a big impact on the possibility of human life, should be categorized as a human right. As I have argued, getting the adequate health care services is a need. It might be claimed that the right to health care “is a shorthand way of talking about more fundamental rights, such as life, liberty, and property” (DesJardins, 2006, p. 102). Although I do not want to signify that as if it was a new right, I believe there is a need for clarifying this right. Since technology is developed day by day, our impact on the environment, therefore, on health conditions, good or bad, changes. To make an emphasis on our impact on these conditions would help us become aware of taking more careful steps when we consider the rights of others. If “[t]he whole point of the state is to restrict unlicensed freedom and to provide the conditions for equality of rights for all” (Blackstone, 1973, p. 64), then we have correlative duties or obligations to respect. If a factory does not have a filter and so if it pollutes the environment and the air we breathe, then the way this factory works influences public health and welfare. Then, the administrative committee of the factory ought to have a filter considering the interests of other people.

If “[l]ife, survival, maximum development, access to health and access to health services are not just basic needs of children and adolescents, but fundamental human rights” (*Rights*, 2009), then it should be clarified why health care is a basic *need* and why governments ought to provide health care services as a *right*. Health care, as it is argued above, is an objectively important need; it is required for the full self-realization of humans, and for realizing their full potentials and possibilities. In this sense, good health is one of our fundamental human interests. With health, people have the opportunity to improve themselves. Only after that, persons can have the

ability to reach the opportunities open to themselves, which is needed for them to become full participating members of society by means of voting, actual participating in political activities, running after their interests and their conceptions of the good, etc. Since it *is* a need in that sense, the government *ought to* provide adequate health care services.

Having our attention back at the proposition above, which is “if x has a right to do R , then y has an obligation not to prevent x from doing R ”, let us say that x is an individual who caught cold, and y is government. R is the adequate health care needed; in this example, the health care needed would be to see a doctor and to acquire certain medicines. If persons have a right to health care, because it is an objectively important need, then, we can say that the individual who caught cold has a right to get the adequate health care needed, so the government has an obligation not to prevent that individual to access the related health care services. “Everyone has the right to receive such health care as is appropriate to his or her health needs, including preventive care, and activities aimed at health promotion” (*A Declaration On The Promotion of Patients’ Rights in Europe*, 1994, p. 13).

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. (*The Universal Declaration of Human Rights* 1948, Article 25)

Because health is a *condition* of the body and mind, I refrain from using the words ‘the right to health’; instead, I prefer to say ‘the right to health care’. In World Health Organization’s Joint Fact Sheet (2007), it is said “the right to health”. However, this should not mean the right to be healthy; it should rather mean that “governments must generate conditions in which everyone can be as healthy as possible” (p. 1). In this Joint Fact Sheet, the social determinants of health is emphasized. If the highest attainable

standard of health is a fundamental right, then an effective, preventive health care system must be a social institution (ibid.). To make the services available and accessible is not by itself sufficient. Since our health is determined by many factors, such as working conditions, sheltering and nutrition conditions, and many others, these must be arranged by government's social policies. Furthermore, health care must not be limited to treating illnesses, it should also include preventive treatments in order to see the same disease less in a society. Health care "embraces a full range of services covering health promotion and protection, disease prevention, diagnosis, treatment, care and rehabilitation" (WHO/EURO, 1994, p. 6).

In conclusion, what I try to say is not against what is already said by World Health Organization's Joint Fact Sheet. Governments must generate healthy conditions for its citizens. Although, the Fact Sheet also emphasizes that the scope of the health care is not limited to services, I do not find it a correct use of word as 'the right to health'. We can obtain health care as a right. However, we cannot expect a condition of the body and mind to be a right as a service of the government. Social policies should be arranged in such a way that by health care, a more complex care including preventive care, not merely services provided by health care providers and establishments⁷ should be understood. Furthermore, by health care, healthy conditions must also be obvious. Therefore, saying "the right to health care" including healthy conditions regulated by the social policies of the government, which implies a larger scope than mere services, is a better usage.

⁷ The definition of health care I use is "[m]edical, nursing or allied services dispensed by health care providers and health care establishments" from *A Declaration On The Promotion of Patients' Rights in Europe* by WHO/EURO, 1994, p. 15.

3. 3. What is Meant By ‘Health Care’?

Health care has a very large scope. If we think of health care as a main set of services, there occur many subsets which include many services that can be gathered under a general name as health care. It can be claimed that some of those services are needs, while some other services excluded in the meaning of “need”. Since having the adequate health care *needed* is a right, some services, which are also the subsets of health care, can merely remain in the borders of a want or a desire. Therefore, which services can be called a *need* and which services turn out to be just a *desire*, and not a need at all, should be made clearer. However, before clarifying this, it must be explained why we *need* health care and what the aim of health care should be.

‘What is the aim of health care and why do we need it?’, is a question that should be answered for the sake of my arguments in this thesis. Many things can be said about the aim of health care. Health care provides people with normal functioning. According to Daniels (1981), “we need our health” and we need to have the appropriate health care because of its impact on the range of our opportunities (p. 154). Daniels expanded Rawls’ theory of justice to health care; therefore, because of its impact on the range of opportunities, it is not so unusual when he emphasizes the importance of health. Without adequate health, one cannot reach opportunities open to all who are similarly talented; even the required education has been given in order to become aware of one’s talents and interests. Moreover, health also influences the quality of life one leads. If one does not get the health care needed when she is sick, then this means that one has an obstacle which obstructs the way she wants to live. If one needs a kidney in order to get better again, and if there is not a suitable organ to be transplanted for now, then one has to stay connected to a dialysis machine for a few hours for a few days a week which will obviously restrict the way one wants to lead one’s

life. Just to give an example, such a patient would not have a chance to go abroad or to take a holiday for a few weeks. In other words, that patient would not be able to do what she prefers to. To say briefly, the healthier we are, the more unconstrained life we live. Therefore, if we ask what we really need, the answer should be to get the adequate health care when we need. This need has a relation with desire; however, health care is not by itself *just* a desire.

When we ascribe something as a need, then we mean that without that thing in question we are not able to do what we meant to do. But by a *desire*, we do not mean such a required thing. We just want or prefer to have that thing in question. Some things can both be needed and wanted. For example, one may *want* to buy a new car, because one's car is not working properly any more. However, some other things may not be wanted, but needed. For instance, we may not *want* to eat spinach, but in order to get the iron required for a healthy body, we *need* to eat spinach. Health care belongs to this type of things. Now, it should be made clearer which type of services belongs to health care as a need, and not just as a desire.

In the scope of health care, there are many services. These may not be only the services at hospitals for treatment, but also the ones which are needed for prevention of diseases and for protection of health. For instance, services required for an unpolluted environment can be claimed to be in the scope of health care, because polluted air and water has a bad impact on our health. However, there are also other health care services which can be described as a preference, not as a need. For example, plastic surgery is a service of health care. Though it belongs to health care services, liposuction cannot be claimed as a need. It is a surgery made out of preference. However, this does not mean that all surgeries made under the name of plastic surgery are just desires. Some surgeries are required for someone in order to gain the proper function of an organ. For instance, plastic surgery is a need for a person who was born with fingers stuck together or for babies

who were born stuck together. Therefore, although the scope of health care is quite large, not all services can be considered as a need. Some services of health care, such as emergency services, services for an unpolluted environment or services required for treatment, protection and prevention, can be called a need in order for us to benefit from the range of opportunities open to us or to lead our lives as in the way we prefer to live.

CHAPTER 4

EXPANSION OF RAWLS' THEORY OF JUSTICE TO HEALTH CARE

Norman Daniels has expanded Rawls' theory of justice to health care successfully. To say it briefly, according to Daniels, health care should be institutionalized and should be governed by Rawls' two principles of justice; especially by his opportunity principle. In this chapter, I present and analyze Daniels' expansion of Rawls' theory of justice to health care, and then try to contribute to his theory by showing whether there is a full individual responsibility in maintaining and restoring health, and how the distribution of resources should be made when people *are thought to* risk their own health. I think these questions that are often discussed in health care ethics and medical ethics are important in the sense that they require a concrete philosophical consideration. The basic idea I pursue is that because of its impact on individuals' potentials to fully develop themselves in the way they want, health should be considered crucially important, and no one should be denied access to health care when in need.

Rawls' (2001) theory might sound quite hypothetical in the sense that according to his theory, people are accepted fully functional, which means that they are healthy and suffer no disease (p. 18). However, in real life people do suffer from illnesses and disabilities, and such a condition of the body affects people's lives adversely. For example, people's normal share of opportunities would be diminished if they lose their health. In order to understand this relationship between health and opportunity range, we must first describe what is meant by normal share of opportunities, and we must also clarify how health conditions of people affect their range of opportunities.

For Rawls, fair equality of opportunity forms the basic idea of his two principles of justice. According to his difference principle, which is his second principle of justice, social and economic inequalities are acceptable *only if* they are to the benefit of the least advantaged members of the society (p. 42). The idea behind this principle of justice is the idea of fair equality of opportunity. Socio-economic inequalities are acceptable if “they are to be attached to offices and positions open to all under conditions of fair equality of opportunity” (ibid.). What is emphasized here is the idea that all *should* have the fair chances to attain social positions (p. 43). According to Rawls, there are some irrelevant natural characteristics of people that should not affect their attainment to such positions. In a well-ordered society, as Rawls claims, basic equal liberties and fair equality of opportunity should be protected (p. 66). If anyone has a greater opportunity to attain, for instance, political power, just because of his gender or race, then this inequality cannot be justified. People who are similarly talented and who are naturally endowed with similar characteristics can have the same opportunity range. “[T]he fundamental social and economic inequalities are the differences in citizens’ life-prospects (their prospects over a complete life) as these are affected by such things as their social class of origin, their native endowments, their opportunities for education, and their good or ill fortune over the course of life” (p. 40). Since the opportunities for education have an impact on social and economic inequalities, it might be argued that all should have the same opportunities of education regardless of their social class, family income, race or gender (p. 44). After guaranteeing a good, basic education for all, we can go on by maintaining that one can attain higher social positions by one’s own talents only. The basic idea that lies beneath Rawls’ fair equality of opportunity is that people, who are similarly talented and who are naturally endowed similarly and who want to use those talents and endowments in their lives, should have the same prospects in life regardless of their class of origin into which they are born.

Like the impact of education on the fair equality of opportunity, health conditions of people also influence their range of opportunities open to individuals under fair conditions for all⁸. Before going on, let me remind the definition of health embraced by Daniels. “[H]ealth is the absence of disease, and diseases ... are *deviations from the natural functional organization of a typical member of a species*” (1985, p. 28, Daniels’ emphasis). His stress on this definition of health as normal species functioning leads to the definition of health care needs that requires the “things we need in order to maintain, restore, or provide functional equivalents ... to normal species functioning” (Daniels, 1987, pp. 303-304). He also specifies certain needs such as adequate nutrition and sheltering, unpolluted environment for living and working, healthy lifestyles, preventive and curative medical services and support services (p. 304).

The reason why Daniels holds such a definition of health lies in the idea of Rawls’ stress on the normal opportunity range. In order to maintain a normal range of opportunity, species normal functioning must be maintained. That is why health care needs are considered important and special. “The *normal opportunity range* for a given society is the array of life plans reasonable persons in it are likely to construct for themselves” (ibid., Daniels’ emphasis). Reasonable persons are the persons who have moral power, the capacity for a conception of the good, and who are capable of revising their conceptions of the good. For Daniels, such an understanding of normal species functioning will help us understand what is meant by the normal range of opportunity open to an individual. In Rawls analysis, since people are fully cooperating members of society, and since the political system is arranged to guarantee his two principles of justice, what influences

⁸ By stressing fair conditions for all, I would like to emphasize the idea of Rawls that people are free and equal when they decide to come to an agreement, and they decide that all should have the equal basic rights and liberties. This is the first principle of justice. After that they agree on the second principle of justice, accepting the inequalities only if everyone has the fair equality of opportunity to attain social positions and offices, and if they are to the benefit of the least advantaged members of the society. Therefore, after *guaranteeing* such conditions, it is *fair* for one to pursue his own conception of the good.

individuals' normal range of opportunities is not their irrelevant characteristics, such as race, gender, etc., but their own natural talents and endowments. Therefore, it might be claimed that because of its obvious effect on normal functioning, poor health or disease will affect an individual's talents and skills adversely, and, as a consequence, his normal range of opportunity will be diminished (p. 305). Otherwise, he would be able to use his talents and skills in full potential if he wanted; and therefore, opportunities would be open to him which are available to him in the light of his own talents and skills.

Before moving on, I find it useful to show the strong link between opportunity and justice. This will make it clear as to why a fair share of opportunity is important in Rawls' theory of justice, and also the reason for Daniels to expand Rawls' theory especially by stressing the importance of opportunity. As I have tried to explain in the section on Rawls' theory of justice, there is a priority of the principle of fair equality over the difference principle, and these principles belong to his second principle of justice. Just to repeat briefly, since wealth is a means to pursue the conceptions of the good, opportunities cannot be traded for such a means. When the parties in the original position decide for the two principles of justice behind the veil of ignorance, they have to protect their clients' interests, although they do not know what their conceptions of the good are⁹. Therefore, there must be a

⁹ The need to use a veil signifies that the principles that the parties arrived at are not influenced by people's interests or their particular ends. The principles at which the parties arrived behind a veil show the moral power of individuals' capability to pursue and to revise their own life plans. I find it useful to note here that according to Daniels (1987), the veil that Rawls offers for the parties to select the principles of justice should be a thinner veil when the parties are to select the principles that govern health care (p. 313). Rawls veil is a thick one in the sense that the parties do not know what their clients' interests are, what their conceptions of the good are, what their economic and social conditions are, whether they are young or old, black or white, etc. However, as Daniels (1985) argues, when the issue is the selecting of principles, which would govern the distributions of health care resources, the parties need a thinner veil instead, in order to know its resource limitations (p. 47). For instance, if we are going to select principles to govern the distributions of resources for transplantation system, then we need to know whether there is the problem of scarcity of organs and we would have to find solutions for that problem.

priority of the principle of fair equality of opportunity, which says everyone has to have a fair chance to attain public offices and social positions, over the difference principle (Rawls, 2001, p. 43). A well-ordered society, which is “a society effectively regulated by a public conception of justice” (p. 5), should guarantee what is required for individuals to pursue their conceptions of the good. With the first principle of justice, basic rights and liberties are stressed for everyone as equal. And then, with the second principle, a fair share of opportunities and the means to attain these opportunities is emphasized. Only then, the society can guarantee what is required for individuals to pursue their own conceptions of the good.

After clarifying the importance of the opportunity range and its relation to health, I can go on with describing how Daniels expands Rawls’ theory of justice to health care. As Daniels (1987) claims, the most promising way of expanding Rawls’ theory of justice to health care is to think of health care as an institution among the basic institutions governed by the principle of fair equality of opportunity (p. 311). He stresses this idea by claiming that “we ought to subsume health care under a principle of justice guaranteeing fair equality of opportunity” (Daniels, 1981, p. 160). Here, it is clear that he emphasizes the relation between health and the normal range of opportunity, and wants to point out the importance of health care needs¹⁰. As

¹⁰ In order to explain how Daniels expands Rawls theory of justice to health care, I must also describe the layers he considers for health care. Daniels (1987) offers four layers of institutions in health care system (p. 313). In the first layer, there are the services required to minimize the departures from normal functioning; such as, “environmental cleanliness, preventive personal medical services, occupational health and safety, food and drug protection, nutritional education, and educational and incentive measures to promote individual responsibility for health lifestyles” (ibid.). Second layer of institutions includes the medical services, which provides, protects and corrects declines from normal functioning. Third layer consists of services required for the disabled, elderly and chronically ill patients to maintain them close to idealization as much as possible. These include medical and social support services. Fourth and last layer, for Daniels, does not lead to a question of justice, but to charity and moral virtues become prominent here, since it includes the care for the patients who are terminally ill as mentally and physically. I think, the reason for Daniels considering such patients out of the issue of justice lies in the importance he gives to range of opportunity. Because, it is clear that for such patients, unfortunately, there is not any chance to provide a normal range of opportunity.

I tried to argue above, since people have interests in pursuing their own conceptions of the good, they would all like to have a fair range of opportunity, and after guaranteeing basic rights and liberties for all and a fair range of opportunity, individuals would be able to pursue their own conceptions of the good.

Rawls claims that there are five types of primary social goods (the basic rights and liberties, freedom of movement and free choice of occupation against a background of diverse opportunities, powers and prerogatives of offices and positions of authority and responsibility, income and wealth, and the social basis of self-respect), which are needed for all citizens in order to fully develop themselves and to pursue their own conceptions of the good. These are the goods that are needed objectively by every citizen. When the parties in the original position decide for the principles of justice behind the veil of ignorance, since they do not know what their clients' interests are, they have to guarantee the goods that would be desired by every citizen if they were free and equal. The parties must pursue some goods which are cared by all people in the society independently and impartially. That is why Rawls calls them primary goods.

It can be asked here, considering the relationship between health conditions of people and the range of opportunity, why for deciding the principles of justice the parties did not take into account health care as part of those primary social goods. In Rawls' system, everyone is normal and a fully cooperating member of the society (p. 18). In Rawls' society, since no one is considered to be sick, or since no one is considered to suffer a disease, there is no need for a distribution of health care. As I discussed above, in real life, people do suffer from diseases, they become sick, and this influences the range of opportunities open to them. However, I think, it should be stressed here that while emphasizing the importance of the range of opportunity, it should not be mistaken as it were just related to the possibility to reach jobs

and social positions in society¹¹. Because, in this way we have to consider only one part of the society, not all of it. There are also elderly people in the society, and such an attitude may influence our way of considering them as members of the society. Elderly people do not have the same opportunities that are more readily available to younger people; for example, working in a job that one prefers. Although health care can be claimed to be a *mere* device to attain our goals and to pursue our own conceptions of the good, such an attitude leads us to define health care something as age-biased. Then, the attitudes of physicians towards the patients would be affected. Can a doctor refuse to cure an elderly patient in order to cure a younger patient instead? I would like to draw attention here to the reason behind this decision: in this case, the doctor does not refuse a patient because of her inability to use her own skills to cure that patient, which is a plausible reason, but rather she refuses the patient in order to cure a younger patient just because the younger one has more opportunities still open to her. I think, good health is a condition which we need throughout our lives. Therefore, I should emphasize that what I mean by “range of opportunities” is not the opportunities open to an individual in the area of jobs and social positions, but the opportunities open to an individual required to pursue her own conceptions of the good in all periods of her life.

After expressing my worries about the problem to which the opportunity range approach may lead, I can go on with explaining the relationship between social conditions and health, and how Rawls’ system may help us to solve this problem. I will argue that there is a strong relationship between health and wealth, and will defend that they are

¹¹ Daniels (2002) discusses a similar point, and argues that an age-relative opportunity range would be suitable to allocate health care, rather than considering opportunities according only to one stage of life (p. 4). Earlier Daniels (1981) stated that since each disease will have different effects in different age groups, if people are asked to find out the way to distribute resources related to health care behind a veil of ignorance, they would probably choose a system in which every feature of every age is taken into consideration and they would accept that all would have a reasonable claim on resources since they are ignorant about themselves (p. 170).

connected with each other in some way. I am going to emphasize that there are social determinants of health, and thus people's health conditions might *not* be *solely* dependent on themselves. Therefore, a fair allocation of resources in the light of Rawls' two principles of justice is required in order to hold the risk of poor health influenced by the social conditions at the minimum level.

According to Rawls, in addition to social primary goods that I have mentioned above, there are other primary goods which are natural goods. Rawls (1999) states, "[o]ther primary goods such as health and vigor, intelligence and imagination, are natural goods; although their possession is influenced by the basic structure, they are not so directly under its control" (p. 54). It might be asked here how health can be a natural good. How is it possible to consider health as a characteristic of an individual just like intelligence or imagination which obviously belongs to the individual? Since these characteristics are natural endowments, one can improve them if one has the right conditions available for oneself; for instance, if the individual has an opportunity to go to a dance course then she has an opportunity to improve her imagination or her vigor. I do not claim that there are no diseases or inabilities which will influence the quality of one's life that come by birth. However, I think a greater emphasis should be put on how health conditions of individuals are affected by social conditions that the basic structure leads to. (I will defend my claim in more detail in the following paragraph.) However, what Rawls wants to argue here is that although such natural goods may have an impact on the opportunities that people have, the society does not have an obligation to regulate the inequalities about them. People are unequal in their talents and abilities; therefore, looking for an equality in those kinds of goods would be useless. So, from this comment on, it might be claimed that people are born healthy or unhealthy, and the society does not have any obligation or responsibility to help those who are unhealthy or disabled to pursue their own conceptions of the good, while

health condition is a means for individuals to develop themselves and their opportunities and to pursue their own conceptions of the good. Then, inequalities in health conditions turn out to be a natural inequality, and since people cannot be equal in a strict sense, to give health a special importance seems to be needless.

In order to refrain from misunderstandings to which the above paragraph may lead, I find it necessary to continue by arguing in favor of the strong relationship between health and wealth here. To begin with, “[a]ccess to [health] care ... varies by economic status” (Smith, 1999, p. 148). In health care system in general, a major discrimination between advantaged and disadvantaged patients (in the sense that those who can afford a service and those who cannot) seems to be made on the basis of wealth. As I have tried to state in the introduction, some people may not be able to afford some services; therefore, these people may be denied to access these services¹². In addition to this fact, there is another side of this relationship influencing the social conditions of people, and this causal relation is explained both by the health-selection hypothesis, and by those who are against this hypothesis.

It has been argued by health-selectionists that the relationship between wealth and health may have important consequences. First of all, since wealth is related to social status of an individual, the following question becomes meaningful: does social status determine health, or health social status? The health-selection hypothesis is about a strong relationship between socio-economic status and health. According to this hypothesis, poor health leads to lower socio-economic status. This means that poor health leads to bad social conditions such as “lower positions in the social hierarchy, social exclusion ... increased risk of unemployment and job insecurity, living in a deprived neighbourhood ... indulging in addicted

¹² The most fundamental principle of health care is the importance of human life and health, because health is accepted “as a special good, which has both intrinsic and instrumental value” (Anand 2004, p. 16). On the basis of this principle, health distribution “should not be determined according to people’s income” (p. 17).

behaviour” (Marmot, 2004, p. 45). From the point of view of the health-selection hypothesis, it can be argued that poor health leads to lower participation in labor which would result in poor income, and also “poor health ... may limit an individual’s initial accumulation of human capital and subsequent ascent to higher positions of prestige, power, and wealth” (Haas, 2006, p. 340).

However, there are many thinkers who object to such a conclusion, and defend the reverse causation. For instance, Michael Marmot claims that social factors may produce poor health, not the other way around as health-selection hypothesis claims (p. 45). If we take into consideration smoking that leads to severe illnesses, Mel Bartley (2004) suggests that “smoking ... is in some sense ‘caused’ by socio-economic disadvantage” (p. 58). He also maintains that “socio-economic disadvantage ... makes it harder to give up smoking and therefore means that smoking-related diseases will be more common in disadvantaged people” (ibid.). He also maintains that living in a disadvantageous status may also lead to poor health even if one does not smoke, since one has to live in a “damp house”, experience “hazardous work,” etc. (ibid.). James P. Smith (1999) mentions Whitehall studies and asserts that,

Micro and macro social and economic environments alter human biological functioning. Within the Whitehall study, the principle maintained hypothesis [the social health gradient] appears to be that psycho-social factors, such as work-related stress and social support networks, have major roles to play in the social gradient in health both directly and indirectly by encouraging poor health behaviors. (p. 159)

The connection between health and wealth has also been pointed out by Daniels, Kennedy and Kawachi (2004) who emphasize that social inequalities may lead to inequalities in health. “Some of these [inequalities] occur at the societal level, where income inequality patterns the distribution of

social goods, such as public education, thereby affecting patterns the access to life opportunities which are in turn strong determinants of health” (p. 71). Hence in both ways it can be claimed that there is a strong connection between health and socio-economic status.

Which argument should we favor? Should we accept what health-selectionists claim, or should we accept the arguments of the opponents of health-selection hypothesis? It is clear that social status has an undeniable impact on the health conditions of people; nevertheless, health conditions may also influence people’s social status. By accepting health-selection hypothesis, we can arrive at the solution that health is really important because of its effects on socio-economic status of the individual. Poor health in early childhood may also affect the education level of children. It has been showed that poor health has a relation with poor cognitive development and also with low rates of high school completion (Haas, 2006, p. 341). Furthermore, we cannot deny the effect of education on the range of opportunities open to an individual in the sense, for example, of finding better jobs with higher incomes during adulthood. “The chronically sick and the less educated are less productive, have weaker ties to the labor market, and command lower wages than those who are healthy and well educated” (p. 342). Therefore, we cannot deny the fact that health also influences social status of the individual.

Although it is important to signify the importance of health in such a way, health-selection argument does not provide us with clear explanations for understanding the relationship between health and socio-economic status, because, in early childhood, health and development is also influenced by socio-economic status of the family into which the child is born. As Haas also notes, “poor childhood health, *itself a product of socioeconomic disadvantage*, may lead to lower educational attainment and skill formation, diminished labor market outcomes, lower earned income and wealth accumulation, and fewer resources to invest in the next period’s health” (pp. 340-341, my

emphasis). This shows that there is an interrelated causation between health and socio-economic status.

I think the opponents of health-selection hypothesis argue for something important, too. If we follow the opponents' arguments, we can arrive at the idea that there are social determinants of health, and those determinants are *avoidable* by certain policies that the government would execute. However, at this point, it can be argued that if all the social and economical conditions were appropriately arranged, then everyone would be healthy, and there would be no need to argue for showing the importance of health. For Rawls, maybe, that was the way it should be. After having certain arrangements established, everyone would be above the guaranteeable level in both economical and social sense; therefore, there would be no need to consider health conditions of people as something important. However, I think, that would not be so. We can only hold the risk of bad health that will occur by social conditions at the minimum level because, we would still have chronically and terminally ill patients and those who are born ill or disabled. Furthermore, this is a fact that “[p]oor development during early life, as a result of poor nutrition, not only increases the likelihood of dying from contagious diseases, it also increases the likelihood of chronic disorders in adult life” (Frank and Mustard, 1994, p. 4), and this shows the importance of social determinants of health as a fact. The importance of the argument, which is directed against health-selection hypothesis, lies in the fact that it shows the importance of social determinants of health; and accordingly, also shows that people cannot be held *solely* responsible for their health conditions.

I would like to point out that, because of its effect on the range of opportunities open to individuals, I think, emphasizing the importance of health by the help of health selection hypothesis is also very important. For there are also illnesses that individuals also face when they are born. These can be family-related genetic illnesses that may not be caused by socio-economic status of the family, but by many other biological and physiological

sources. Since those illnesses constrain the range of opportunities open to individual, we have to pay attention to health specifically. So, it can be alleged that when Daniels shows the importance of health, he was right to point out its effects on the range of opportunities open to individuals. As I also argue, by fair allocation of resources which has also an effect on health conditions of people, a greater level of good health may be achieved in the society. I think, since the health is both a *cause* and a *result* of socio-economic condition, it requires special attention, and that point was what Rawls had missed in his theory.

CHAPTER 5

TRANSPLANTATION

5.1. What is Transplantation and Why to Study Transplantation?

Transplantation is a unique cure for dysfunctional or malfunctioning organs. Although it is a recent field of health care system, it offers many important and philosophically interesting medical, legal, and moral issues. “In organ transplantation solid organs and tissues – as distinct from blood or cells – are removed from the body of one individual (the organ donor) and placed into the body of another” (Kushe and Singer, 2006, p. 477).

From one perspective, transplantation is different from other health care services in the sense that it requires a third person apart from the doctor and the recipient: the donor (Örs, 1995, p. 3). While the quality of life of the patient increases with the organ transplanted, the living donor’s quality of life seems to be decreased.

In addition to that, transplantation appears to be quite different from other health care services in the sense of the unique treatment it offers for dysfunctional or malfunctioning organs. A patient who suffers from a dysfunctional or malfunctioning organ would not be healthy again, unless a suitable organ is found and transplanted to the patient. On the other hand, in the cases of many, even serious, illnesses there seem to be more than one alternative. It can be asked as to why I did not choose the case of cancer, for instance, which may also end up with the death of the patient. Cancer has many alternative treatments. Those treatments can end up successfully, but there is always the risk of reappearance of the tumor. Therefore, we cannot get a hundred percent success. However, in the case of transplantation, with the new organ transplanted there is not so much risk of reappearance of the

illness. The only problem may be the rejection of the organ transplanted by the patient, which can be overcome by anti-rejection drugs.

In order to show the importance of transplantation, I think, we have to reconsider the reasons for considering health important that I discuss in Chapter 3. Daniels (1981) proposes the “modified biomedical model” by which we can arrive at the definition that health is the condition of the body as fully and normally functioning (p. 157). Therefore, an abnormality in the body would be accepted as a disease only if the treatment would help the patient to lead her normal life again, and only if that part of the body will function normally again by the treatment. Since transplantation is the only remedy for patients whose organs do not function properly, by transplantation the patient who suffers from a malfunctioning or dysfunctional organ would have a chance to lead her normal life again. Only by this unique cure, that part of the body will gain its normal function back. If this treatment is required to achieve normal functioning, then, without any hesitation, it can be claimed that transplantation is an objectively ascribable need. Just to have a quick reminder, “objectively ascribable” means that needs are ascribable to anyone independent of the strength of his other contrary preferences (p. 152). And needs are said to be objectively important, when “we attach a special weight to claims based on them in a variety of moral contexts, and we do so independently of the weight attached to these and competing claims by the relevant individuals” (ibid.). If we maintain the idea of normal functioning, then we can show the objective importance of transplantation as a need, as Daniels argues for health care. Dysfunctional or malfunctioning organs, as it is so in poor health, affect the range of opportunity open to individuals. For instance, if a patient’s kidneys do not function properly, or do not function at all, then she has to live connected to an artificial kidney machine, until a suitable organ is found and transplanted. Although living by the help of a machine is possible, it severely reduces the quality of life of the patient and the range of opportunity

the person would otherwise have. Thus for such a patient to live a good, fully functional life, there are no alternatives but transplantation of a new and functioning organ¹³. By Daniels' definition, since malfunctioning or dysfunctional organs is a sign of poor health, and since without health we may not be able to pursue our goals, our range of opportunities would decrease without having the required treatment. Although we have a capacity to revise our conceptions of the good (Rawls, 2001, p. 19), and although we can always adjust our goals in relation to the situations we are in (Daniels, 1981, p. 154), it can be claimed that poor health reduces our range of opportunities. It can be argued, on the basis of these reasons, that transplantation is an objectively important need, which helps us to maintain our normal functioning; and therefore, by this unique cure the range of opportunities open to individuals would be provided which is needed for individuals to construct their conceptions of the good. As a result, I think, considering a Rawlsian understanding of justice for transplantation and taking transplantation as a special case would be perfectly in conformity with the views of Daniels as well.

What makes transplantation unique in an ethical sense is the unrenovability of the organs or body parts taken from the living donor (Örs, 1994, p. 57). For example, organ transplantation is different from blood transfusion in the sense that the amount of the donated blood of the donor can be recovered by the donor's body; however, even when an organ is procured from a living donor, the body cannot re-produce the organ transplanted (Kushe and Singer, 2006, p. 477). Although the quality of life of living donors might be decreased, donors' lives should not be at risk. Since solid organs are not renewable resources, procurement of organs from living donors cannot be claimed to be a solution for patients. Procurement of

¹³ Although the supply of kidneys is scarce, people are encouraged for transplantation instead of dialysis (Ruth, Wyszewianski, and Herline, 1985, p. 516), since transplantations cost less than dialysis machines (though a single machine serves many people) and the patient has the chance to lead a good life again (Dewar, 1998, p. 160).

unrenewable organs and tissues from the donor may lead to function losses, which constitute the main medical problem (Örs, 1994, p. 57).

The scarcity of resources, i.e. organs, is one of the major problems in transplantation, which requires philosophical and moral consideration. One reason for this scarcity is that people reject to donate their organs for psychological, religious, or other cultural reasons. In fact, some people do not want their organs to be transplanted to people from other races, religions, etc. Such beliefs lead to decrease in donations and increase in the number of patients waiting in ever growing lists.

With the scarcity of resources, many questions, which require moral consideration, arise. If the number of patients is growing and if there is scarcity of resources, who should get the available organ? Who should decide? Are the criteria for transplantation really right to decide how to allocate the organs? Do the systems work perfectly and properly or do they have defects? Furthermore, shortages caused by the scarcity of resources “can lead to inequities in the distribution of such [health care] services, where the economically or socially disadvantaged may be denied opportunities for life saving organs due to their lack of political and social influence or ability to pay” (Dewar, 1998, 157).

In transplantation system, money is not taken into consideration at all when a suitable organ is found for a patient¹⁴. The important criteria are the rank of the patient in the waiting list and the suitability of the available organ for patients, urgency, best outcome, and so on. The waiting list process in transplantation might be called a “ranking system”, and such a system provides an equity, since the principles used in organ allocation take into consideration equity and efficiency, and such principles “help characterize the allocation of organs as a moral and rather than purely technical matter

¹⁴ However the situation is a bit different for the patients who are waiting for a marrow transplant. Since every test for every found marrow costs very high, in the United States the patients who are unable to afford it are not put in the list (Dewar, 1998, p. 163).

because they explicitly identify that some of the key features of organ allocation, such as ensuring equity, are socially defined values” (Valapour, 2004, p. 1). This system, when allocating organs, gives priority to the most severely ill patients, except for the lung allocation, which is based on the waiting duration of the patient on the waiting list only (ibid.). However, there may be exceptional cases. For instance, lungs may not be allocated to the sickest patients, since there is a risk of failure of transplantation. This is a calculation of utility: since there is scarcity of organs, there should be a limiting factor in the allocation system (p. 2). Because of such limiting factors, the system may turn out to be not as perfectly a fair system as expected. According to age and disease, younger patients have more chance of surviving after transplantation’s first year, because of that the priority may be given to such patients.

Patients with diseases such as cystic fibrosis, in which individuals are younger and do better in the first year after transplantation, will probably have more access to a transplant than patients with diseases such as idiopathic pulmonary fibrosis, who tend to be older and don’t have good first-year post-transplant outcomes. (p. 4)

Although ranking system is acceptable, it may lead to some problems in the formation of waiting lists. For instance, according to Kamm (1993), “it is random who gets ill *and* who gets what place in line. ... [H]owever, who gets onto an organ line is both affected by factors unrelated to the earlier appearance of disease and is not random” (p. 295). She seems to emphasize that the occurrence of a waiting list may be determined by other external factors (such as calling before another patient), which are different from the time of occurrence of the disease in the patient. If patients are placed in the waiting list by the occurrence of their disease rather than their application, lists would not entirely be formed by chance, for the

occurrence of a disease is not merely determined by chance, since it is not always random who gets ill. It has widely been accepted that poor social conditions lead to poor health as I mentioned earlier. If the person cannot be nourished properly and be exposed to bad living conditions, then it is a high probability for that person to have poor health.

From the fact of scarcity of organs, selections should be made for transplantation (Schmidt, 1998, p. 50). For instance, in order for the patients to be a candidate for transplantation they “must have reached the final stage of their disease” (p. 53). Another criterion is the compliance after the transplantation. After the transplantation, “patients themselves take on an active role in the process” (p. 54). Physical and psychological factors influence the compliance at this stage. Due to “immune-based rejection” (Joralemon 1995, p. 337), the body may not comply with the new organ and may reject it, although she takes anti-rejection drugs (Schmidt, 1998, p. 54). In addition, though being a temporary response, the patient may reject the new organ due to psychological factors such as having someone else’s body part in her body (Joralemon, 1995, p. 337). It may then be argued that patient selections are inevitable in order to prevent organs waste (Schmidt, 1998, p. 54). Therefore, it should be noted that “the goal of recipient selection must ... always be to find ... ‘the one patient’ who would be best served with the organ in question and to whom, *all things considered*, it would best fit” (p. 64).

In the present organ procurement systems for transplantation, there are different kinds of methods adopted by many countries in order to increase the number of organs to be donated. For example, some European countries such as Austria, Finland, Italy, Norway, Belgium, Denmark, Sweden, France have adopted the system of opt-out (Statz, 2006, p. 9). In this system, people are accepted as donors unless they state that they do not want to

donate their organs. In order to increase the number of organs donated, incentives are also used. For instance, tax reductions and payments can be made to the donor's family in order to afford the donor's family's expenses, etc (Dewar, 1998, p. 165). There is another system adopted by many countries such as Australia, Canada, and Britain (Kushe and Singer, 2006, p. 478): the system of opt-in. The organ of the decedent can be donated only if she expressed her wish by a written consent or by telling to her relatives about it when she was alive (Statz, 2006, p. 5). This system is also in practice in Turkey. In this thesis, I will consider this system only.

According to the statistics of Onkod (Organ Nakli Koordinatörleri Derneği) whose data are verified by Turkish Society of Nephrology, in Turkey, more patients are added to the number of the patients who wait for a kidney, heart and liver transplantation about 9000 every year, and about 7000 of them die while waiting on the list (Onkod, 2007). This means that the system in practice is not a perfect system at all and does not solve the problem of scarcity of organs.

As a unique cure for dysfunctional or malfunctioning organs, transplantation has a quite specific moral importance. As I have emphasized above, scarcity of organs is a major problem in transplantation which leads to morally important questions that I also discuss in the following sections. I think, inequity appears in this field of health care system. There are many methods being used in order to increase the number of organs donated; such as, the system of opt-out and incentives. In Turkey, the system of opt-in is used, and throughout the statistics it is obvious that this system does not solve the problem perfectly well. There is still the scarcity of organs, and patients die, unfortunately, while they wait on the national waiting list for a suitable organ to be transplanted. I think, scarcity of organs is avoidable if certain methods can be used. For instance, the number of organs donated could be increased if people had greater awareness of the importance of the results that the problem leads to and the importance of transplantation as a unique

treatment. People's awareness about the importance of donating organs would be increased by education. Unfortunately, many people do not pay attention to the importance of the problem, unless they or one of their relatives face such a problem. In addition, since the definition of brain death is really important in cadaveric organ donation, and since people are not well-informed on this issue, people lose confidence in medical practitioners and reject to donate their organs. People have a tendency to think that if they expressed to donate their organs, the physicians would not do what was required to do before they had been diagnosed as having had brain death. Such a distrust to medical practitioners results in a shortage in the number of organs donated. I think, since many things can be done in order to increase the number of organs donated, but since nothing or too little is being done to solve the problem, an inequity occurs in this system of transplantation.

As I argued above, transplantation is a unique cure for dysfunctional and malfunctioning organs. Because of this reason, it is an objectively important need in order for patients who suffer from dysfunctioning or malfunctioning organs to lead their normal life again. In addition to that, since malfunctioning or dysfunctional organs is a sign of poor health, and since without health we may not be able to pursue our goals, our range of opportunities would decrease without having the required treatment. I believe, these reasons make transplantation worth studying both philosophically and morally.

5.2. Fairness By Inequality? A Rawlsian Model For Transplantation

Throughout the rest of this section, I try to develop a model for organ procurement, allocation, and transplantation on the basis of Rawls' Theory of

Justice as Fairness¹⁵. I think economic inequality may be part of the system if it results in fairness, i.e. if it is to the benefit of the least advantaged. Who would be the *least* advantaged in this system? Those who cannot afford transplantation even when they have suitable organs available should constitute one of the least advantaged groups. This claim assumes that scarcity of organs for transplantation is not as great a problem as funding transplantation operations and the following treatments. In such a situation justice allows at least occasional auctions for organs in order to raise money for the least advantaged above. In other words, money can enter the system as a factor (in addition perhaps to waiting lists, urgency, the best outcome considerations, etc.) without disturbing fairness. I think a Rawlsian model results in a fair system in transplantation case as well because, with the modified system in the model, one can arrive at the conclusion that economic inequality would result in a fair system.

If we try to develop a Rawlsian model for transplantation, then, first, we have to mention certain constraints. The Rawlsian model for transplantation requires that scarcity of organs for transplantation is not very severe. However, since there is not enough funds for transplantation procedures, some disadvantaged patients may not be able to have the organs transplanted. Rawlsian model may offer a solution to this problem. In order to see this, let us consider an example. Suppose there are two patients with different incomes and in need of suitable organs. They are both on the waiting list. There are also five more patients in a critical condition for whom suitable organs have been found but since the government cannot afford the transplantation expenses, they cannot have transplantation¹⁶. The

¹⁵ This model is a part of the paper presented at the First International Congress on Medical Ethics and Law, Antalya, Turkey (Zümriit Alpinar and Ayhan Sol, 2007).

¹⁶ This example was considered by F. M. Kamm (1993) without the conditions that I have emphasized for the Rawlsian model (pp. 296-297).

poor patient¹⁷ is the first on the waiting list. From the present transplantation system's point of view, since money is not a relevant factor, the poor patient should be transplanted, if a suitable organ is found which is suitable both for the patients. However, we can ask, what if the priority to obtain the organ be given to the rich patient, who is able to fund his transplantation expenses and the required treatments afterwards, and the money acquired by the auction for the organ were used for transplantations of the other five patients? Instead of just one life, six lives would be saved. In order to derive a Rawlsian model for transplantation without disturbing fairness, even when a suitable organ is found for the patient, who is the first on the waiting list, if that patient does not have enough money for auctions or is unable to afford the expenses after the surgery, then her priority should be given to richer patients in order to have auctions. The existence of disadvantaged patients (who have their organs already; however, do not have enough money to afford the surgery and the required treatments' expenses afterwards) is the reason for having auctions in a Rawlsian model. The money acquired from the rich patient through auctions is used in the same system for the benefit of the disadvantaged patients as much as possible. Therefore, although there is an inequality here, it ends up with an advantage for the disadvantaged patients. It should also be noted here that the poor patient, who is first on the list¹⁸ is not let in a life-threatening condition for denying an organ. If she has such an urgency, then, without questioning, she should get the organ. Therefore, for an acceptable and reasonable Rawlsian model, the first patient denied of an

¹⁷ What I mean by "poor patient" must be defined clearly for the sake of the example. By poor patient, I mean a patient who is not rich enough to obtain an organ through auctions or who is unable to afford the expenses of the surgery or the required treatments afterwards. In this sense, this patient is also in the least-advantaged group. In this example, the ones who are among the five other patients (who have their organs; however, who are waiting for suitable funds to have their organs transplanted) are also accepted as poor patients.

¹⁸ I find it important to emphasize the fact that being first in the list by itself is not sufficient to get the organ, unless everyone had the equal opportunity to apply to be in the list. Although waiting lists may involve randomness due to factors, such as calling before another patient, assuming that everyone is aware of the existence of such lists the randomness in question does not lead to unfairness.

organ should in a condition to wait longer to have an organ. Assuming that we are behind the veil of ignorance this model is to the benefit of all, for everyone gets what she needs in the long run. Poor patients will have their surgery expenses covered and rich patients, if they are ready to pay for organs will get them earlier. Since the model does not allow anyone to be in a life-threatening condition it fares better than crude utilitarian models.

I think, the Rawlsian model with the modification of permitting wealth as a factor can be used for transplantation. Rawls considered inequality not a necessary source of injustice, but rather as an opportunity to develop a theory of justice in society. I think, the system, when the required constraints taken into account, can be so modified by allowing wealth as a factor only in those cases that it creates funds for the least advantaged.

Now, I would like to consider whether Rawlsian model has superiority over consequentialism. A more extreme version of the above case may show that consequentialism is not preferable for justifying moral judgments, because it may lead to intolerable consequences. John Harris (2001) argues that in organ procurement and allocation (i.e. transplantation in general) consequentialism with its principle of the greatest benefit for the greatest number can lead to healthier societies (pp. 300-315). He defends his view by presenting and analyzing an example throughout his paper. In his example, there are two persons Y&Z who are both in need of organs. Y needs a heart and Z needs new lungs, and Harris supposes that there are no other needy patients. He then claims that if the doctor who is responsible for the treatments of those patients rejects to cure them, even if there are suitable organs in stock, then it is the negligence of the doctor. However, if there are no organs suitable in the stock, then doctors have no choice. Here he emphasizes a difference between killing and letting die. In the first case, the doctor refused to save them and so *kill* them in a sense. However, in the second case, the doctor had to let them die, because there were not any other choices left. At this point, Harris states the arguments of Y&Z about what

can be done. The doctor chooses a person just passing by and kills him, in order to get his organs, and by doing so he would save two (or maybe more) lives. Here Harris seems to emphasize that killing an innocent would be wrong even if many lives saved. For Y&Z, there is no difference between that person and themselves. They claim that if that person is innocent, they are also innocent, since they did not choose to have malfunctioning or diseased organs. In order to overcome this problem, the patients Y&Z put forward a system, which is called a survival lottery. According to this system, everyone in the society has a lottery number, and the computer randomly chooses one person whose life is to be ended. However, this leads to the problem of security of citizens, violation of right to live, etc. At the end, Harris finds out that it would be a discrimination made against the healthy people living in the society, since it is a society-wide lottery including everyone. So he concludes by stating that the lottery number should be given to those who are imprudent and unhealthy. He claims that such a system would lead to a healthier society, since people will try to be more prudent, in order not to be in the lottery, and consequently the number of the patients will decrease. It should also be noted that he admits that since his proposed system allows the procurement of organs from the unhealthy and imprudent to be allocated to those in need—selecting and killing people who will certainly die because of the disease they have—it may lead to injustice because, in the final analysis, we are punishing the unhealthy, in order to get his organs. In other words, it leads to discrimination against minorities (unhealthy), even if it may lead to a healthier society, as Harris claims (p. 314).

The Rawlsian cannot so easily accept Harris's system of survival lottery, since such a consequentialist view sees people just means to further ends. Also, I think, individuals' basic rights can easily be overridden by such an approach. Furthermore, as also Harris admits, such a system may lead to discrimination; and therefore, would lead to injustice. I think, also selecting

among the imprudent and unhealthy for organ procurement may lead to injustice, and therefore not acceptable. In the next section, I will discuss this issue in detail and will arrive at the conclusion that people should not be held solely responsible from their health conditions, because there are many factors that determine an individual's health.

There may be more moderate versions of the above cases, but it is obvious that life and death situations are always the source of the most challenging moral dilemmas that do not allow the most satisfactory solutions. But I think Rawls' theory seems to offer relatively more reasonable solutions as compared to consequentialism that may sometimes have morally repugnant consequences, because consequentialism sees people not as ends in themselves but as merely means to further ends. As for less extreme cases in which organs and funds are relatively more abundant, the selling of organs, in order to provide funds for the least advantaged may be allowed only on the conditions that one does not get an organ just because she is rich or that one does not get into a very critical condition when she is denied an organ.

5. 3. The Responsibility for Health Conditions and a Case Study for Transplantation

Responsibility is an issue worth discussing which requires deep philosophical thinking especially in ethics. In this section, I consider individual and social responsibility to each other for our health conditions, and endeavour to develop the argument by looking for a case in transplantation. I argue that an individual should not be considered as totally responsible for her own health condition, because there are social determinants of health which influence an individual's health either in a good or a bad way.

In today's transplantation system, there are waiting lists, and patients should get in the line in order to get a suitable organ. Let us think that there are two patients waiting on the same waiting list for a suitable organ to be transplanted. It has been asked, for instance, what the morally right decision would be if a suitable organ was found for the patients waiting on the same waiting list. According to today's transplantation system, the first patient on the waiting list should get the organ. But what if the first patient was imprudent? Should we punish her, so to speak, just because she did not take care of her life and health seriously, or should we consider the conditions that led her to be in such a situation? If we think of the example given by Harris in the section above, I think it should be asked what the reasons are for those people to be imprudent and unhealthy. Were there any economical and social factors influencing their health? If one is imprudent and drinks too much, for instance, then is she the only one to be responsible for such imprudence? I think, these are the questions worthy of asking if we are dealing with justice in health care and trying to achieve a just health care system.

If we accept the fact that there are various social determinants that affect a person's health, ought we not to say that we are totally responsible for our health¹⁹. Our health is sometimes thought to be dependent solely on ourselves. For instance, we can be healthier if we take good care of ourselves by doing regular exercises, and/or by not smoking or drinking too much alcohol, and also by having a nutritious diet. However, the health of a person may be influenced, besides her genetic makeup, by many external/social factors, which are not dependent solely on the person herself. Sheltering conditions, nutrition conditions, working conditions, the quality of health services from which the person is benefiting, the conditions of the environment in which she lives, etc. may frequently be crucial. For instance,

¹⁹ Social determinants of health that affect an individual's health condition and how much the individual can be held responsible for her health condition is discussed in our paper presented at the 9th World Congress of Bioethics in Rijeka, Croatia (Zümürüt Alpınar, Murat Civaner, and Yaman Örs, 2008).

if the person lives in a damp flat for a long time, she would be expected to have more frequent respiratory infections, possibly with serious health problems in her later life. Moreover, if the person did not have clean water for her daily use, then she would probably have serious health problems due to microbiological and/or other causes. Here one could ask as to whether it is the person's own choice to live under such conditions, dwelling in that damp flat or using that unclean water. The answer to such questions would, probably in most cases, be "no". No one would deliberately choose, normally, to endanger her life with such unhealthy conditions.

Let us further consider this claim by an example: alcoholism. Alcohol dependence is accepted as a disease. Alcoholism "*is due to a combination of genetic, psychological, and social factors-an interaction between the person, the substance [alcohol], and the environment*" (italics are the author's) (Berger, 1993, p. 45). For instance, children of alcoholic parents are more likely to become alcoholic (p. 14), and also it is believed that it passes from "parents to children and from them to the children's children" (p. 41). "For a combination of genetic and environmental reasons, COAs [children of alcoholics] are at a high risk of developing into alcoholics themselves" (p. 53). Furthermore, the brain structure also plays an important role:

Individual susceptibility to alcoholism may be due to some biochemical imbalance in the system. Recent studies point to possible deficiencies of a chemical in the brain, the neurotransmitter serotonin Experiments with serotonin levels and alcohol consumption show that as drinking goes up, the serotonin level drops.

Scientists are also finding that alcoholics and nonalcoholics may have differences in the activity of certain enzymes. The lowered activity of these enzymes could affect certain significant functions in the brain and could be a contributing factor that might lead to alcoholism. (p. 47)

Therefore, it can be argued that there are both genetic and biological factors and also social and environmental factors that would make some people more susceptible to alcoholism.

Alcoholism is considered to be a disease “in which a genetic disposition is affected by environmental factors” (p. 43). Due to some personal traits, poor mental health, family characteristics, environmental and social factors, people might become alcohol dependent. Psychological factors also play an important role in becoming alcohol dependent. One may start to get alcohol in order to reduce her emotional pain. For instance, a person may start to drink alcohol due to a psychological reason such as depression. No one chooses to have depression, however; besides, genetic factors play an important role in certain cases of depression. For one thing, the living conditions (socially and economically) may lead one to drink alcohol. Also, stress as a psychological effect may lead one to alcoholism.

As I said above, alcohol dependence may have many causes, which are not solely related to person’s own choices. There may be facts, which are beyond one’s control. Furthermore, according to “social cost” argument, it is fair to help those who are *not* strongly responsible for their health, and the causes of whose illnesses are just beyond their control (Glannon, 1998, p. 35). For instance, if a person was able to refrain from a disease (in this case alcoholism) and was unable to exercise this control, then it would be unfair for the physician to give priority to the patient who has an alcohol-related illness. Therefore, it does not seem very reasonable to argue that the priority in transplantation, for instance, should be given to those who are prudent on the basis of moral consideration only. Furthermore, it is wrong to make a *moral* evaluation to decide which patient should have the medical care because of their life-styles. The alcoholic, regardless of its causes, “should be treated as an ill person” (Jones, Shainberg, and Byer, 1970, p. 70). However, I think, it should also be noted here that we cannot be completely sure about which factors influenced a person’s health condition, and, on the

basis of our limited knowledge about a patient's life, we cannot decide about how much the patient tried to be prudent or imprudent. But, what I try to point out here is that we should take into consideration the fact that there are social determinants of health.

As I have argued for the strong relation between social conditions and health, I think, according to Rawlsian understanding of justice, the economic inequalities must here be used for disadvantaged people, in order for them to have better social and living conditions. Therefore, a just distribution of resources related to health is one of the crucial steps for a healthier society. We cannot achieve to a healthier society without eliminating the bad conditions related with disadvantaged people. I have tried to emphasize that there are social determinants of health, and thus people's health conditions might *not* be *solely* dependent on themselves. Therefore, a fair allocation of resources in the light of Rawls' two principles of justice is required in order to hold the risk of poor health influenced by the social conditions at the minimum level.

CHAPTER 6

CONCLUSION

In this thesis, I have endeavoured to expand Rawls's theory of Justice as Fairness to health care. The reason that I study Rawls' theory lies in the fact that his theory draws our attention to individuals' needs, to the importance of equality of opportunity and to the impact of policies, which are enforced by the government, regarding individuals' fulfillment of their potentials and providing the conditions to pursue their own conceptions of the good in order to become full contributors to their society. Although social and economical inequalities lead to inequity if they are avoidable and unfair, John Rawls seems to accept inequality in the most appropriate way possible. According to him, inequality in society is acceptable only in so far as the least advantaged members of the society benefit from it. I think, by stating that the natural endowments which people have from birth and the irrelevant characteristics of individuals should not influence rights that individuals should have and the policies that are held by the government, Rawls develops a very plausible theory of justice, Justice as Fairness, which provides us with the most promising answers to the questions that inequity generates.

I preferred to study health because of its impact on the range of opportunity open to individuals, and because of its great impact on people's life prospects. Without health, people will not be able to fulfill their potentials. Because of these reasons, health care should be considered as an objectively important need in the sense that all persons, when in poor health, should get the adequate health care needed without any regard to their ability to afford the services. If, today, we observe the fact that people are denied to access the services needed in order to be healthy again due to their inability to pay for the related services, then this means that there occurs an inequality

between the patients who can be accepted as advantaged or disadvantaged due to their ability to pay to get the adequate service. However, health is not solely determined by the health care services and the way they work, but there are many other factors that determine the health level of the persons. These factors are called as the social determinants of health. Although genetic factors also play an important role in individual's health conditions, social determinants of health signify the importance of responsibility that the society and government have towards individuals about their health conditions. In this thesis, I have tried to show that Rawls' theory of Justice as Fairness provides us with the most promising answers considering the influence of those determinants of health. I further argue that if the determinants of health are avoidable, and if those determinants lead to inequalities because of its effects on health conditions of people, and if poor health ends up with inequalities in economical and social sense, then doing nothing to avoid risk would lead to inequity. Therefore, I tried to show that, by considering health care as an institution regulated by Rawls' two principles of justice and fair allocation of resources; it is possible to hold the risk of bad health influenced by social conditions at the minimum level.

In Rawls' system, health does not have an important place because, in his system no one is considered to be sick. For Rawls, people are fully functional people. However, this is not the fact. People do suffer from diseases and from several health problems, and these have an effect on their range of opportunities. Daniels, who expanded Rawls' Theory of Justice as Fairness successfully, claims that health care should be considered as an institution among the background institutions regulated by the opportunity principle because of its impact on the range of opportunity. However, as he also states, he did not take into account the responsibility of the individual in maintaining and restoring her own health. In this thesis, I tried to contribute to the theory which Daniels expanded by arguing for the importance of the determinants of health and by showing that they are avoidable if certain

policies are held by the government. I also argued that individual's health conditions should not be thought to be merely dependent on them.

I have also discussed a special case in health care, namely transplantation. Considering transplantation as a special case is important in the sense that it is a unique cure for a patient who suffers from a dysfunctional or malfunctioning organ to live a good, fully functional life. I considered transplantation in my thesis, because dysfunctional or malfunctioning organs, as it is so in poor health, affect the range of opportunity open to individuals. Furthermore, I think, an inequity occurs with the system adopted in Turkey because of the problem of scarcity of organs. If the system adopted could be changed or if some policies could be held in order to increase the number of organs donated, then it would be easier to avoid the problem. The system adopted in Turkey is not a perfect system at all, as I have tried to argue. Although money is irrelevant to acquire an organ in this system, I argued that, only when certain conditions provided, introducing money into the system will not lead to inequity if a Rawlsian model can be developed. I also endeavored to show that a Rawlsian model can be used for transplantation which offers relatively more reasonable solutions as compared to consequentialism that may sometimes have morally intolerable consequences.

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