

HOW CAN WE BE FAIR AND EQUITABLE? THE PRINCIPLE OF JUSTICE

Bioethics: Course Notes | Brendan Shea, PhD (Brendan.Shea@rctc.edu)

Learning Outcomes. In this lecture, you'll be learning to:

1. Differentiate between formal and material principles of justice.
2. Describe and apply major philosophical theories of justice, including utilitarianism, libertarianism, liberal egalitarianism, and communitarianism.

We have discussed three principles of the common morality so far: **autonomy**, **nonmaleficence**, and **beneficence**. The final principle involves **justice**, or the “fair, equitable, and appropriate distribution of benefits and burdens determined by norms that structure the terms of social cooperation.” Justice is concerned with “distributing” benefits and burdens such as property, taxes, food, shelter, health care, and opportunities for education and employment.

Every person who cares about the common morality must be committed to the principle of **formal justice**, which requires that “*equals must be treated equally, and unequals must be treated unequally*.” However, this principle does not say anything about which particular properties are relevant to determining whether two people are “equal” in the relevant sense. These properties are specified by principles of **material justice**. Disagreement about principles of material justice is at the heart of recent debates about how health care should be funded.

WHAT SHOULD A PRINCIPLE OF MATERIAL JUSTICE LOOK LIKE? SOME PROPOSALS

B-C present some of the most influential principles of material justice, and argue that we must balance *all* of these when making decisions about health care (since it is unlikely that people will ever agree completely on which principle is best). Among other things, these principles have consequences for how we *fund* health care (Should it be private? Or paid for by the government?) and how we make decisions about treatment (How should we decide who gets transplant organs? How do we distribute scarce drugs?).

UTILITARIANISM—“TO EACH PERSON ACCORDING TO POLICIES AND ACTIONS THAT MAXIMIZE NET UTILITY [HAPPINESS]”

How does it work? Among other things, people’s happiness is affected by things like (1) meeting their basic needs for food and shelter, (2) having money and time for recreation, and (3) being in good health. Utilitarians claim that our policy makers ought to look solely at *total utility*. In the context of health, utilitarians argue that we should adopt whatever health care system delivers the best *results* (in terms of life expectancy or whatever) for the lowest cost. This may involve infringing on people’s “rights.”

Problems? Utilitarianism says that there are no *fundamental* rights to autonomy or nonmaleficence. In the context of health care, this might mean loosened restrictions on biomedical research, denying people expensive medical treatment (when the resources could be better used elsewhere), or extremely high tax rates on the rich if this “paid off” in terms of improved health outcomes for the poor. Conversely, utilitarians might be fine with allowing rich people to “buy” better medical care, if this allowed better funding for medical care overall.

LIBERTARIANISM—“TO EACH PERSON ACCORDING TO WHAT HE/SHE CAN OBTAIN BY MAKING EXCHANGES IN A FAIR, WELL-REGULATED FREE MARKET THAT MAXIMIZES PERSONAL LIBERTY.”

How does it work? Pure libertarians generally claim that the government’s *only* role is to enforce contracts, punish crime, and (perhaps) to provide a “fair chance” for the young. They generally oppose all government spending on health care for competent adults.

Problems? Libertarians often underestimate the role of *luck* in the way the free market distributes goods (“good” genes and “good” families are, in many societies, the strongest predictors of how much money someone will make). They also underestimate the extent to which an individual’s accumulation of wealth depends upon investments made by the government and by other individuals. This theory may lead to extremely poor health outcomes for the poorest or most vulnerable members of society.

COMMUNITARIANISM—“TO EACH PERSON ACCORDING TO THE PRINCIPLES ADOPTED BY HIS OR HER MORAL COMMUNITY.”

How does it work? Communitarians argue that since different religious, political, business, and social groups will have different ideas about what “justice” requires, we ought to develop policies that allow people to respect the rules of their communities. A local Catholic hospital serving a predominantly Hispanic community, for example, might have different priorities from a large, international research hospital, at least in part because of the different values.

Problems? What happens if an individual is being mistreated by his or her group, or simply disagrees with the rules adopted by the groups they are part of? For example, Jehovah’s Witnesses (as a group) refuse to accept blood transfusions. This doesn’t mean that *individual* Jehovah’s witnesses will always refuse them. Communitarians have a tough time with these cases.

LIBERAL EGALITARIANISM—“TO EACH PERSON AN EQUAL MEASURE OF PERSONAL LIBERTY; THEN, GOODS ARE FAIRLY DISTRIBUTED IN A WAY THAT MAXIMIZES THE WELL-BEING OF THE WORST OFF (THOSE WHO ARE LEAST WELL-ABLE TO MEET THEIR NEEDS).”

How does it work? When applied to medicine, this principle means that (1) people’s rights to autonomy and to not be harmed must be respected, (2) there can be no unjustified discrimination (**fair opportunity rule**), and (3) inequalities (in medical care or anything else) can be allowed, but only if they maximize the position of the worst off (the **difference principle**).

Problems? The government will need to be intimately involved in distributing health care resources, and the end result will not be the outcome that “maximizes life expectancy” or “minimizes cost.” It will redistribute resources from the rich to the poor. It is a limited theory of justice in the sense that it *only* deals with how a political state should distribute “goods” or “stuff” (in the form of money, resources, etc.) to its citizens, and does not deal with “human well-being” or “happiness” in the broader sense that utilitarianism does.

OTHER APPROACHES: CAPABILITIES AND WELL-BEING

Capabilities Approach—“*To each person the goods and skills necessary to develop the core capacities needed for a successful, flourishing life.*” Some **core capacities** include: life/survival, bodily health, bodily integrity, sensory/imaginative/cognitive, emotional, practical reason, affiliation with others, relationships with animals/nature, play, political power. **Problems?** It is very difficult to measure a person’s level of “capacities.” As opposed to the other views, this also seems to leave very little room for people to decide for *themselves* what a “good life” would be.

Well-Being Approach—“*To each person the goods necessary to realize the following dimensions of well-being: health, personal security, reasoning, respect, attachment, and self-determination.*” Like utilitarianism, this approach focuses on distributing **welfare** (though it emphasizes equality) and not merely on the *capacity* or *right* or *goods* necessary to achieve this welfare. **Problems?** Again, one worry here is that it may be an overly intrusive government/organization, since it provides a detailed list of what is supposed to count as a “good life” for each and every person.

REVIEW QUESTIONS

1. What is the difference between a “formal” principle of justice and a “material” principle of justice? Why do you think it is so tough for people to agree on which “material principle” of justice is correct?
2. One recent debate about justice has concerned the desirability of allowing people to make “designer babies” with specifically chosen genes. Assume this can be done without raising abortion-related worries (e.g., that it does NOT involve destroying excess embryos, but instead involve merely *manipulating* the genetic material of existing embryos). Which of the following sorts of genetic manipulations (assuming they are someday possible) are consistent with justice? Why or why not? As you are thinking about these, consider the sort of *society* that might result (and what sorts of safeguards or policies you might want to adopt).
 - a. Using genetic manipulation to ensure a baby is NOT born with a serious genetic condition (such as cystic fibrosis or hemophilia).
 - b. Doing this to correct a less serious health issue (e.g., a “designer baby” that will be less prone to high cholesterol or breast cancer during middle age, or Alzheimer’s during old age).
 - c. Doing this to “improve” a trait that may be somewhat below normal levels (e.g., tinkering with genes related to substandard height, intelligence, propensity to anxiety/depression, etc.).
 - d. Doing this to choose sex, hair (or eye or skin) color, or similar traits.
 - e. Doing this to *intentionally* have a child that is blind or deaf (perhaps because the parents are blind or deaf, and would like to have a child that shares this experience with them).
 - f. Doing this to “improve” a trait so that the resulting child will be significantly ABOVE normal (intelligence, strength, beauty, happiness level, etc.)

ACTIVITY: DESIGNING A NEW SOCIETY

Suppose that you are in charge of starting a new society, which you will then *randomly* be assigned a role in. For the purposes of this exercise pretend that you do NOT know the following things: how much money you will have, what your physical or mental abilities will be, how healthy you will be, what gender or race you are, or what your religious or philosophical beliefs are. You have the following options. Why which would you choose why?

1. Anarchism—It’s everyone for themselves! The advantage is that, if you are strong/clever, you can steal everyone else’s stuff. The disadvantage is that the same is likely to happen to you. Since there are no enforceable laws or taxes, cooperative projects that depend on these (police, fire, education, health care, business contracts, etc.) are basically impossible. Life is likely to be “nasty, brutish, and short.”
2. Utilitarianism—Goods are distributed in whatever way maximizes *net* happiness. For example, health care spending might be distributed to maximize average life expectancy. Utilitarians prefer a society in which three people lived to 100 and one person lived to 25 (total = 325 years) to a society where three people lived to 80 and one lived to 60 (total = 300 years). There is no guarantee your rights will be respected (maybe we kill the 25-year old to use her organs), though utilitarians think that it is *usually* a good idea to respect the principles of autonomy and nonmaleficence, and to distribute resources equally.
3. Libertarianism—To capture the idea that one can’t choose one’s parents, goods will be *randomly* distributed to each person (though each person will be guaranteed a small amount of “free” goods corresponding to the benefits of publicly funded education of

children). However, some people will start with much more than others. Fundamental rights to autonomy and non-maleficence will be protected. Health care (along with everything else) is distributed according to ability to pay.

4. Liberal Egalitarianism—Fundamental rights to autonomy, non-maleficence, and fair opportunity will be protected. After that, goods (including the resources relevant to providing health care) will be distributed to maximize the position of the *worst off*. For example, liberal egalitarians would prefer the situation in which the “worst off” person lives to 55 to the one in which she lives to 25, and will distribute health care resources accordingly.
5. Marxist (Absolute) Egalitarianism—Insofar as it is possible, goods will be distributed to ensure absolute equality. For example, people who require lots of resources will be given these, while those who are extremely talented will be made to work more to provide these. Marxists try hard ensure equality of outcomes, even if this requires violating “rights.”

For a concrete example, here is how each theory might distribute your stuff (money, resources, etc.) among six people Abby, Ben, Claire, Dennis, Eileen, and Frank. Remember, you don’t know which “person” you will be, since this is randomly determined. I’ve included a few notes on the sorts of things that might explain why/how various things might happen. **Note: These numbers are made up! The idea is just to give you a sense of the general *types* of outcomes that each theory might be OK with.**

	Anarchism (No rules! No society!)	Utilitarianism	Libertarianism	Liberal Egalitarianism	Marxism
Abby	0 (dead)	0 (dead, sacrificed for the greater good. Perhaps she simply has an illness that is resource-intensive to treat)	1 (no one can kill her, but she’s still pretty badly off)	3 (she gets some aid from others; she is as well off as she could be, without violating others rights)	4 (here, she gets the same as everyone else, but the overall costs to everyone else might be high)
Ben	0 (dead)	7	1	4	4
Claire	0 (dead)	8 (note how well the “middle” people do in util.)	4	4	4
Dennis	1	8	4	6	4
Eileen	1	8	10	6	4
Frank	4 (“king of the jungle”, takes things by force)	5 (forced to work nonstop to aid others, and maximize overall wellbeing)	10 (doesn’t have to do any work for other adults)	7 (has to do some work for Abby/Ben, but he a baseline of rights that must be respected)	4 (forced to work; may be penalized simply to make things “equal”)
TOTAL	6	36 (This is the highest!)	30	30	24
Rights to speech, assembly, religion, etc. protected?	No!	No	Yes	Yes	No

As you can see, each theory has its own “risks”—the utilitarians might kill you “for the greater good”, you might end up poor/disabled in the libertarian society, you may be taxed heavily in the liberal egalitarian society, and the Marxist society will take away your rights.

JUSTICE: A BRIEF BIBLIOGRAPHY

Over the past 50 years or so, philosophical debates about the nature of justice have probably had more influence outside of philosophy than any other area of philosophy. In particular, the modern three-way debate between liberal egalitarians, libertarians, and communitarians (and between utilitarians and all of these other views) has had a big influence on many different political debates (including, but not limited to, those concerning health-care funding). If you’re interested in learning more about these debates, I’ve included a brief list of sources below. Where possible, I’ve tried to choose sources that are freely available online, primarily from the Stanford Encyclopedia of Philosophy. A few others are books that should be widely available at nearly any library (or which you can get cheap used copies of). To start, I would look at the following:

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For more on particular topics that interest you, see the following:

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17. Vossen, Bas van der. 2019. “Libertarianism.” In *The Stanford Encyclopedia of Philosophy*, edited by Edward N. Zalta, Spring 2019. Metaphysics Research Lab, Stanford University. <https://plato.stanford.edu/archives/spr2019/entries/libertarianism/>.
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